1	BEFORE THE TENNESSEE BOARD FOR LICENSING CONTRACTORS
2	
3	IN THE MATTER OF:
4	Docket No. 12.14-107124A
5	Virgil L. Norris as an individual And
6	d/b/a Southern Concrete Company 8384 Walnut Tree Drive
	Cordova, Tennessee 38018
7	
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12	MAY 18, 2010 BOARD MEETING (FORMAL HEARING)
13	
14	
15	Location: Crowne Plaza Memphis Downtown 300 North Second Street Memphis, Tennessee 38105
16	
17	Time: 1:30 p.m.
18	
19	
20	
21	MORROW & ASSOCIATES
22	COURT REPORTERS 80 Monroe Avenue, Suite 610
23	Memphis, Tennessee 38103 (901)528-1168
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1	- APPEARANCES -
2	ADMINISTRATIVE JUDGE: Mattielyn B. Williams
3	BOARD MEMBERS:
4	Mr. Mark Brodd Mr. Reese Smith, III
5	Ms. Cindi G. DeBUSK - Chair Mr. Ronnie Tickle
6	Mr. Earnest M. Owens
7	For the Board:
8	MS. JENNY GRAY Attorney at Law
9	BOARD OF LICENSING CONTRACTORS 500 James Robertson Parkway
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12	For the State:
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15	Office of Legal Counsel 500 James Robertson Parkway
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17	(615) 741-3072 michael.driver@tn.gov
18	Also present:
19	Telise Roberts Assistant to the Board
20	Nicole Canter
21	Paralegal to Michael Driver
22	Reported by: CORA JEAN LEWIS
23	Morrow & Associates 80 Monroe Avenue, Suite 610
24	Memphis, Tennessee 38103 (901) 528-1168

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1 P-R-O-C-E-E-D-I-N-G-S
2 THE COURT: Today is Tuesday,
3 May 18th, the year of 2010. This is a

4	hearing conducted by the Tennessee Board for
5	Licensing Contractors. The Board is chaired
6	by Ms. Cindi DeBusk and will now consider the
7	case of Docket No. 12.14-107124-A, Virgil L.
8	Norris, doing business as Southern Concrete
9	Company.
10	It appears that Virgil Norris, doing
11	business at Southern Concrete Company is
12	unlicensed. Assistant General Counsel,
13	Michael Driver represents the State in this
14	matter. Mr. Norris is present today and you
15	appear to be without an attorney.
16	Sir, are you aware of your right to
17	an attorney and are you electing to waive
18	that right to represent yourself?
19	MR. NORRIS: I waive it.
20	THE COURT: All right. In this
21	matter. Such is noted for the record.
22	My name is Madelyn Williams, and I'v
23	been assigned by the Secretary of State to

1	judge. I'll make rulings regarding the order
2	of the proceedings, the admissibility of the
3	evidence, questions of law under the
4	authority granted me through the Tennessee

serve at this hearing as administrative

5	Administrative Procedures Act, but will not
6	participate in the findings of fact and
7	conclusions of law or ultimate decision of
8	this Board.
9	Those decisions will be made by the
10	board members. At this time I would like to
11	ask the board members to introduce themselves
12	for the record, beginning with the board
13	member to my immediate left.
14	MR. OWENS: Earnest Owens,
15	Memphis, Tennessee.
16	MR. TICKLE: Ronnie Tickle,
17	Memphis, Tennessee.
18	MS. DeBUSK: Cindi DeBusk,
19	Knoxville.
20	MR. SMITH: Reese Smith,
21	Franklin.
22	MR. BRODD: Mark Brodd,
23	Knoxville.
24	THE COURT: Thank you. And a

-

quorum of this Board does exist. Members of
the Board, I remind you that during the time
this hearing is being conducted no discussion
of this case should take place between board
members, witnesses, attorneys, or other
persons unless all parties are present. This

Board sits as a jury and must only consider
the information introduced at the hearing in
reaching its decision.

The Sunshine Law requires all Board

The Sunshine Law requires all Board discussions and deliberations to be in public before all parties. Failure to observe the Sunshine Law may result in the Board's action being reversed or remanded. Board members please do not draw any conclusions until all of the proof has been heard. Please listen to all of the proof with an open mind.

Before going further, I would remind the members of the Board that the law requires you to disclose on the record any outside knowledge of this case or any communications: Written, verbal, or otherwise that you may have received from any of the parties concerning this case.

At this time I would like to ask the
State's attorney or perhaps the assistant to
the State's attorney to distribute the Notice
of Hearing and copies of the law and any
applicable rules to board members at this
time.

Board members, I would encourage you

8	to look at the Notice of Hearing to see
9	whether or not you have any outside knowledge
10	of the alleged facts in this case or any
11	personal interest in any of the matters.
12	Once you have reviewed the Notice of Hearing
13	and determined whether or not you have any
14	outside knowledge or any interest in this
15	case, please look up so that I can tell that
16	you have finished reviewing the notice.
17	It's my impression that two
18	members of the Board are reviewing the notice
19	still. Is that correct? Let me check with
20	the gentleman furthest away from me. And you
21	sir, have you completed reviewing the notice?
22	MR. SMITH: I have.
23	THE COURT: Okay. Then it seems
24	that all members of the Board have now
	9
	9

1	reviewed the Notice of Hearing. Does anyone
2	have anything to disclose, any conflicts of
3	interest, any prior knowledge, any personal
4	relationship with the respondent, anything of
5	that kind to disclose, board members?
6	MS. DeBUSK: No, Your Honor.
7	THE COURT: All right. Then you
8	all may continue to serve in this matter.
9	The prehearing technical report in

10	the Norris matter consists of the following
11	documents: April 9, 2010, the Notice of
12	Hearing and Charges; April 30, 2010, Notice
13	of Hearing Location; May 7, 2010, my opening
14	letter; May 12, 2010, State's list of
15	proponent's witnesses and exhibits.
16	Is either party aware of additional
17	documents that should be a part of the
18	prehearing technical record?
19	Mr. Driver?
20	MR. DRIVER: No, Your Honor.
21	THE COURT: Mr. Norris, are you
22	aware of any other documents that should be
23	part of the prehearing technical record?
24	MR. NORRIS: No.

1	THE COURT: All right. At this
2	point I'm going to swear in the witnesses who
3	are going to testify. It seems that there
4	are two witnesses for the State who are
5	present in person. Is the State going to
6	have any additional witnesses by telephone
7	conference call?
8	MR. DRIVER: No, but Ms. Roberts
9	will also be
10	THE COURT: Okay, these three

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11
          witnesses?
12
                       MR. DRIVER: That's correct,
13
          Your Honor.
                        THE COURT: Mr. Norris, I would
14
           assume you are going to testify on your own
15
16
          behalf?
17
                        MR. NORRIS: Ma'am?
18
                        THE COURT: I notice you're
19
          having a little trouble hearing me.
                        MR. NORRIS: Yeah, I do.
20
                        THE COURT: Why don't you take
21
22
          this seat right beside me.
2.3
                       MR. NORRIS: I have a problem
          hearing.
24
                                                       11
 1
                        THE COURT: Sure, certainly.
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2 That's noted for the record. MR. NORRIS: I have a lot of 3 problems. THE COURT: Okay. And is there 5 anything I've said so far that you claim you haven't heard? 7 MR. NORRIS: No. 8 9 THE COURT: And I wish you had 10 disclosed that to me earlier. I'm sorry about that. Okay. So there's going to be 11 three witnesses for the State. 12

Mr. Norris, you're going to testify 13 14 on your own behalf? MR. NORRIS: Right. 15 THE COURT: Do you have any 16 additional witnesses who are going to testify 17 18 either in person or by telephone conference 19 call. MR. NORRIS: No, ma'am. 20 21 THE COURT: The four witnesses 22 who are going to testify are present in the 23 room. I would like to ask each of them to 24 please raise their right hand after me at

12

1 this time.

Do you swear or affirm that the

testimony that you're going to give during

this hearing will be the truth, the whole

truth and nothing but the truth, so help you

God.

THE WITNESSES: Yes, ma'am.

8 THE COURT: Let the record

9 reflect that four persons have been sworn at

10 this time.

When there are multiple

12 witnesses for one side of the case and it

appears there's three witnesses for the

14	State's side of the case, one of whom will
15	probably be designated as your party
16	representative. Who is going to be the party
17	representative, Mr. Driver?
18	MR. DRIVER: Ms. Roberts. Well,
19	I mean as party representative?
20	THE COURT: Yes, you're not
21	going to have one.
22	MR. DRIVER: We don't have
23	anyone designated as a party representative,
24	no.

1	THE COURT: I wanted to be
2	certain. You have the right, Mr. Norris, to
3	exclude any or all of the State's witnesses
4	until it's their particular time to testify.
5	But in most cases the witnesses are allowed
6	to remain in the room. But you do have that
7	right. What's your choice?
8	MR. NORRIS: Do whatever is
9	necessary.
10	THE COURT: Do whatever is
11	necessary. Does that mean you want them to
12	stay in the room or you want them to stay out
13	until it's time for their testimony?
14	MR. NORRIS: No, they can stay
15	in the room. That would be fine.

16	THE COURT: Mr. Norris, please
17	speak so that the court reporter, Ms. Lewis
18	can hear you.
19	He essentially said he would be fine
20	if they stay in the room.
21	MR. NORRIS: Right.
22	THE COURT: So then that rule
23	has not been invoked. So the witnesses may
24	all stay in the room. Let me just give a

brief overview of the remaining parts of the hearing for Mr. Norris's benefit.

The next thing I'm going to ask is whether or not either party has any stipulations? Have there been any agreements between the parties that there are certain facts that aren't going to be contested in this matter? Does anyone think that this Board doesn't have jurisdiction to hear your matter, any preliminary motions of that kind?

After that I'm going to ask about opening statements. Opening statements are optional. They're basically a summary of your side of the case. They are optional. You can make an opening statement or you can waive opening statement. I asked about that.

After that, then we'll have the witnesses's testimony. For each witness that testifies on behalf of one party, the opposite party will have an opportunity to cross-examine that witness, to ask questions of that witness. And board members also will have an opportunity to ask questions of each witness who testifies on behalf of each

1 party.

2.2

Then we'll go to closing arguments. Closing arguments are also optional. If you wish to make a closing argument, you would be relying on the facts as proven or as asserted by the various witnesses and any exhibits that are introduced and arguing why when you look at the facts of this case and applicable statute and rules and case law why your side of the case should win or prevail. Closing arguments, just like opening statements, are optional. You can make one or you can decline to make one.

Certainly, Mr. Norris, at any point that you want to proceed with a question, don't hesitate to stop me and ask. But based on that brief overview do you have any procedural questions at this time before we

19	go further?
20	MR. NORRIS: No, ma'am.
21	THE COURT: All right. Then let
22	me call for preliminary motions and
23	stipulations. Let me start with the State.
24	Mr. Driver are you aware of any
	16
1	stipulations in this matter and do you have
2	any preliminary motions to make?
3	MR. DRIVER: Neither, Your
4	Honor.
5	THE COURT: Mr. Norris, any
6	stipulations, any preliminary motions?
7	MR. NORRIS: No.
8	THE COURT: Opportunity for
9	opening statement. Would the State like to
10	make an opening statement or prefer to waive
11	opening statement?
12	MR. DRIVER: The State will
13	waive opening statement, Your Honor.
14	THE COURT: Mr. Norris, would
15	you like to make an opening statement or
16	prefer to waive opening statement?
17	MR. NORRIS: Yes, ma'am. When I
18	get through opening, I can leave

THE COURT: No, sir. It's a

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20 little bit too soon.

21 MR. NORRIS: -- it's that

22 simple.

23 THE COURT: I would suggest that

24 you would not.

17

1 MR. NORRIS: It would be wasting

2 time.
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A few years back we did some work for
these people. And Mr. Wong's wife was the
one that handled it, handled the contract.
And we did everything we were supposed to do
and then plus. They added some walls behind

the house that were built.

Now, to get back to the law, I've had a contract. I've noticed that there have been papers that said I never had a general contractor's licence. Well, I built the interstate down here from Norris Road to Lamar back 40-something years ago. So I did have a license then. But I don't know how far it goes back.

When I got out of that company and completely got out of it, just started doing work on my own, small work, I called the Board of Licensing Contractors. They said it wasn't necessary for me to have a license up

22 to \$50,000. Then when I got a letter later
23 on, and I forgot just exactly when it was.
24 That was either 25,000 or 50 they told me.

18

1	And then I got a letter from somebody
2	questioning my license. So they said you've
3	got to get a home improvement, I said, well,
4	I called the home improvement people. This
5	had been probably seven or eight year ago.
6	I'm not exact on the time because I never
7	thought it would come up. But I called them
8	and they said that up to a certain amount of
9	money, I believe it was 25,000 then, that you
10	didn't have to have anything. They said all
11	you had to have was a privilege license,
12	which I've always had a privilege license:
13	State, county, and city, City of Bartlett,
14	City of Germantown and all of them. I've
15	always had a privilege license there. And
16	that's what I operated on, not knowing any
17	difference.
18	It's a possibility, you know, that
19	because I didn't know it, and I just didn't
20	know it. Because I had questioned everyone
21	that should have been concerned with it. And

as far as the work I've done, I done it

completely. Things that Mr. Wong didn't like or his wife -- I don't know who it was, but

she was the one handling all the business. I didn't meet him but once or twice.

And then on the case of Mr. Lawson out there in Germantown, I told him on the front end of the job after we got it broke down and was pulling it back that the right side of his driveway going into his house needed a wall. Well, he didn't want to put a wall in. So evidently he got a little bit of water that comes down into his driveway. And I tried to tell him that me needed a wall on the opposite side of the driveway.

And I did do that. I did do those jobs. I'm not trying to get out of them. I did them and I did them for probably what they've got on the papers. But I didn't do anything unlawfully, no one did. I've been working ever since and I've worked for 50-something years in the contracting business. I've built interstates, lots of culverts and everything else. And I believe I can do a driveway without screwing it up.

I had men for 25 or 30 years with me and they knew concrete. I poured it all

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1 around and did everything. SW built bridges
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- 2 and I did everything else: Dirt work, pipe
- 3 work, concrete work, and everything on the
- 4 interstate.
- 5 That's really all I've got to say and
- 6 I'm open for questions.
- 7 THE COURT: Thank you for your
- 8 opening statement. If you would call your
- 9 first witness, please, Mr. Driver.
- 10 MR. DRIVER: The State would
- 11 call Mr. Lee, Your Honor.
- 12 THE COURT: Please proceed.
- 13 SAMUEL LEE,
- 14 having been previously duly sworn, was
- examined and testified as follows:
- 16 DIRECT EXAMINATION
- 17 BY MR. DRIVER:
- 18 Q. Would you state your name for the
- 19 record, please.
- 20 A. Samuel Lee.
- 21 Q. Mr. Lee, are you familiar with Mr.
- Norris?
- 23 A. I am.
- Q. How are you familiar with Mr. Norris?

- 1 A. Mr. Norris was contracted to do some
- work for my home, particularly to pour a
- 3 driveway and a back patio.
- THE COURT: Excuse me, Mr.
- 5 Driver. Given Mr. Norris's hearing
- 6 impairment, could Mr. Lee speak up just a bit
- 7 more, please?
- 8 MR. DRIVER: Sure, Your Honor.
- 9 BY MR. DRIVER:
- 10 Q. I'm going to give you a document. If
- 11 you could look at it and tell me what that
- 12 is.
- 13 A. This is the estimate that Mr. Norris
- 14 provided to my wife and I and the one that
- was accepted.
- 16 Q. And to the best of your knowledge and
- 17 belief that's an estimate from Mr. Norris to
- 18 your wife?
- 19 A. That's correct.
- 20 Q. Is that a true and correct copy that
- 21 I just handed to you?
- 22 A. It is.
- Q. What's the amount on that estimate?
- 24 A. \$10,300.

- 1 Q. And did you understand Mr. Norris to
- 2 be licensed to do the work that he was
- 3 offering to perform for you?
- 4 A. That is correct.
- 5 MR. DRIVER: The State would
- 6 move that that be entered as the first
- 7 exhibit, Your Honor.
- 8 THE COURT: Any objection, Mr.
- 9 Norris to entering a copy of the estimate?
- 10 MR. NORRIS: Yeah, I'm looking
- it over right now. The difference in the
- 12 price and the total that's somewhere here at
- 13 the bottom, they added stuff as we went
- 14 along.
- 15 THE COURT: All right. That in
- 16 a sense is a comment on the document, but not
- 17 truly an objection to it. So then --
- MR. NORRIS: He had a backhouse.
- 19 Right there where it says backhouse.
- THE COURT: Okay.
- MR. NORRIS: And we took down
- 22 chains and a porch and stuff that they wanted
- 23 taken down. So that was in addition to the
- 24 original price.

- 2 shown on the document itself. Correct?
- 3 MR. NORRIS: Well, they're
- 4 showing it down here.
- 5 THE COURT: Mr. Norris, I don't
- 6 receive copies of the exhibits.
- 7 MR. NORRIS: Oh, I'm sorry.
- 8 Yes, ma'am.
- 9 THE COURT: Because I'm not a
- 10 party to the suit.
- MR. NORRIS: And then extra dirt
- that was brought in was \$1200 and they agreed
- on that. They wouldn't have paid me that.
- 14 And the front wall.
- 15 THE COURT: So then it sounds
- like you are agreeing that that document
- fairly represents the original estimate with
- 18 some additions --
- MR. NORRIS: Yeah, we had an
- 20 original estimate. The front wall, I
- 21 explained that. It had an old box cover on
- that area up there, was 80 to 90 years old
- and a box culvert underneath this one. I
- 24 should have charged more than that.

- 1 Underneath the sidewalk, I had to redo that
- 2 and use rock. On each side and so forth.
- 3 THE COURT: All right. So then

- 4 you're agreeing it is an accurate document?
- 5 MR. NORRIS: Yes, ma'am.
- 6 THE COURT: The document is
- 7 entered at this time. It's Exhibit 1. Would
- 8 you please have the court reporter mark the
- 9 copy that the witness is testifying from as
- 10 Exhibit 1.
- 11 Mr. Driver, do you want copies of
- 12 Exhibit 1 distributed to the board members at
- 13 this time.
- MR. DRIVER: Yes, Your Honor.
- THE COURT: If you would, please
- 16 distribute those copies to the board members,
- ma'am.
- Thank you.
- 19 (The above-mentioned document
- was marked as Hearing Exhibit Number 1.)
- 21 BY MR. DRIVER:
- 22 Q. Mr. Lee, what was the work that was
- 23 to be done under this proposal, which you
- said was accepted?

- 1 A. The work that was to be done was to
- 2 pour a concrete driveway and to pour a back
- 3 patio. The additional work that was agreed
- 4 upon was to pour a front walk from the house

- 5 to the sidewalk, to take down some chains
- 6 that were in the backhouse and to put some
- 7 dirt into the backyard.
- 8 Q. And are those additional things you
- 9 just described as the handwritten note where
- 10 it says plus 500, 1600 hundred, and plus 1200
- 11 for a total of 13,600?
- 12 A. That's correct.
- 13 Q. And was Mr. Norris paid under the
- 14 contract?
- 15 A. Yes, he was fully paid.
- 16 Q. And did Mr. Norris provide you with a
- 17 receipt of final payment as well as a
- guarantee of the work he performed?
- 19 A. Yes, he provided a three-year
- 20 guarantee. He also provided a written
- 21 document representing that he would complete
- 22 all the work and correct all the defects for
- the full payment.
- Q. And could you review these documents

2.6

- 1 I'm going to hand you, Mr. Lee?
- 2 A. (Witness complies.)
- 3 THE COURT: Mr. Driver, have you
- 4 handed opposing counsel a copy, respondent is
- 5 serving as his own counsel a copy?
- 6 BY MR. DRIVER:

7 Q. Do those appear to be true and 8 accurate copies of those documents you just described? 9 Correct. 10 Α. 11 MR. DRIVER: The State would 12 move that those be entered, I guess, 13 collectively as the next exhibit. THE COURT: After you've had a 14 15 chance to review the documents, please let me know whether or not you have any objection to 16 17 proposed Collective Exhibit 2, Mr. Norris. Any objection? 18 MR. NORRIS: Yes, ma'am. 19 THE COURT: Okay. The basis for 20 21 your objection? 22 MR. NORRIS: Ma'am? THE COURT: The basis for your 23 objection? 24

27

MR. NORRIS: No, I don't want to

object to this, sorry. I can't hear. I told

you that.

THE COURT: I know, but you and

I are sitting next to each other.

MR. NORRIS: Yeah.

THE COURT: Let's bear that in

8 mind that we really need to speak loudly. 9 All right. There being no objection, the documents are entered at this time. 10 MR. NORRIS: Can I make a 11 12 statement? 13 THE COURT: Yes. 14 MR. NORRIS: This guarantee 15 wasn't on the original contract. The only 16 way I could get my money is give him a 17 three-year guarantee on something that wasn't 18 agreed up front. 19 THE COURT: Okay, but that doesn't sound like an objection to the 2.0 document itself. 21 2.2 MR. NORRIS: Okay.

testify on your own behalf you'll be able to

THE COURT: Certainly, when you

28

23

24

comment on any and all exhibits that have
been entered.

MR. NORRIS: Yes, the contract
is on the 22nd. All of this was the 28th.

THE COURT: Okay, and certainly
I would encourage you to make notes because
you may very well want to comment on various
exhibits when it becomes your turn to

testify. The documents are entered at this

- 10 time as Collective Exhibit 2.
- 11 Do you wish them distributed to the
- 12 board members?
- MR. DRIVER: Yes, Your Honor.
- 14 THE COURT: If you would, please
- 15 do so.
- 16 (The above-mentioned document
- 17 was marked as Collective Hearing Exhibit
- 18 Number 2.)
- 19 BY MR. DRIVER:
- 20 Q. Mr. Lee, could you please describe
- 21 for the Board your dealings with Mr. Norris
- 22 to the extent we haven't covered them.
- 23 A. Sure. Mr. Norris began the work. He
- was paid in installments. On December 28,

- 1 Mr. Norris insisted upon being paid a final
- 2 installment even though the work was not
- 3 completed. Because of that I requested -- he
- 4 had promised to complete the work after he
- 5 had received the final payment. The document
- 6 that has been distributed is the written
- 7 guarantee from Mr. Norris that he would
- 8 complete the work no later than December 29th
- 9 and receive the final payment. I did not
- 10 request a guarantee. That was provided to me

- 11 by Mr. Norris.
- 12 After Mr. Norris was paid the final
- installment, Mr. Norris did not come back and
- 14 complete the work, nor did he resolve the
- problems with the work that he had originally
- done. Primarily, he did not do the work in
- 17 accordance with the plan that was provided to
- 18 him. He refused to complete the work and he
- 19 refused to fix that problem.
- 20 Thereafter -- this was December 29th.
- 21 I had to file suit against Mr. Norris in
- 22 April and when I had to hire another company
- 23 to come in and complete the work and to
- 24 resolve the problems. So I had to sue

- 1 Mr. Norris for a little over \$4000 and won a
- judgment against Mr. Norris in General
- 3 Sessions Court.
- 4 To date Mr. Norris has not paid the
- 5 judgment nor has he provided any further
- 6 restitution.
- 7 Q. And to clarify also, Mr. Lee, your
- 8 home is located in Shelby County; is that
- 9 correct?
- 10 A. That's correct.
- 11 Q. And the judgment was obtained in the
- 12 General Sessions Court of Shelby County?

- 13 A. That is correct.
- 14 Q. Mr. Lee, would you say that the dates
- on those documents from November 22nd until
- December 28, that Mr. Norris continued to
- operate as what you believed to be a licensed
- 18 contractor or home improvement contractor for
- 19 at least that period?
- 20 A. Yes.
- 21 MR. DRIVER: Nothing further
- from this witness, Your Honor.
- 23 THE COURT: All right. This is
- your opportunity, Mr. Norris to ask questions

- of the witness. Please proceed with your
- 2 first question of Mr. Lee.
- 3 MR. NORRIS: The only thing is
- 4 he made a statement that I need to
- 5 contradict.
- 6 THE COURT: Okay. You will have
- an opportunity to testify in full, but do you
- 8 have any questions, Mr. Norris?
- 9 MR. NORRIS: No, I don't need to
- 10 ask him any questions.
- 11 THE COURT: Okay. Then no
- 12 questions were raised.
- Board members, questions for Mr. Lee?

- MR. TICKLE: I've got several.
- 15 CROSS-EXAMINATION
- 16 BY MR. TICKLE:
- 17 Q. Mr. Lee, did you see a license?
- 18 A. I did not.
- 19 Q. Did you actually receive a warranty
- in writing other than this piece of paper
- that we've been handed?
- 22 A. Other than this guarantee I did not
- 23 receive any other warranties.
- Q. What work was not completed?

- 1 A. He was supposed to have built three
- 2 steps from the bottom porch to the top
- 3 landing. He did not build the steps. He
- 4 built effectively an additional smaller wall
- 5 in front of the larger wall. I have pictures
- if you need to see that. He was supposed to
- 7 have built a drain in the bottom of the
- 8 patio, which he did not complete as well.
- 9 Q. That would be in addition to what we
- 10 have before us here. We have the front wall,
- 11 backhouse, dirt. What you're mentioning
- 12 right now does not appear on what we have in
- front of us?
- 14 A. The pour concrete patio per plans,
- that was part of the original bid for 10,300.

- 16 The additional were the front walk, the
- 17 backhouse, and the dirt.
- 18 Q. But the drain and everything is on
- 19 the plans that you have provided; is that
- 20 correct?
- 21 A. Yes, that is correct.
- 22 Q. You were awarded a judgment for
- 23 \$4000, correct, in civil court?
- 24 A. Correct.

- 1 MR. TICKLE: Okay. Thank you.
- 2 CROSS-EXAMINATION
- 3 BY MR. OWENS:
- 4 Q. Mr. Lee, you mentioned that you made
- 5 plans available?
- 6 A. That's correct.
- 7 Q. Were there any elevations on those
- 8 plans?
- 9 A. I can't recall if there were actually
- 10 elevations on the plan, but the plan clearly
- showed three steps from the bottom to the top
- 12 landing.
- 13 Q. I'm speaking in reference to the
- 14 walk. It's my understanding --
- 15 A. Oh, the elevation for the wall?
- 16 Q. Yes.

- 17 A. Yes, sir, there were elevations for
- 18 the wall.
- 19 Q. It's my understanding from the
- 20 testimony that there had to be a retainage
- 21 wall built to keep water from spilling over
- the walk?
- 23 A. That's correct.
- Q. Was this an additional cost?

- 1 A. No, sir, that was not an additional
- 2 cost and there was no problem with the
- 3 original retainage wall. The problem was
- 4 that the steps were not built from the bottom
- of the concrete patio to the retainage wall.
- 6 Q. I'm concerned only about the water.
- 7 Was this the reason for the retention wall
- 8 being built that water was crossing the walk?
- 9 A. The retention wall was built because
- 10 the backyard was at two levels. So yes, it
- 11 was for the water and for the dirt in the
- 12 backyard.
- 13 Q. But the retention wall was not extra?
- 14 A. The retention wall was not extra.
- 15 Q. But there were elevations on the
- height of the wall?
- 17 A. The height of the wall, yes.
- 18 Q. Well, my point is if there were

- 19 elevations, it should have been above the
- 20 grade so the water wouldn't have spilled
- 21 over?
- 22 A. That is correct. And like I said,
- 23 there was no problem with the actual wall
- 24 itself. There were no issues with the wall.

- 1 Q. But in relationship to the elevations
- on the walk and the existing grade. My point
- 3 is if there was an elevation on the wall and
- 4 existing grade water shouldn't have crossed
- 5 the wall?
- 6 A. No. I --
- 7 Q. If I'm seeing the right picture?
- 8 A. Well, maybe this will help. (Witness
- 9 supplies additional pictures.)
- 10 These are pictures of the concrete
- 11 patio and retainage wall.
- MR. TICKLE: Could we see those
- 13 pictures closer?
- 14 THE WITNESS: Sure.
- 15 THE COURT: And Mr. Driver, has
- opposing counsel, Mr. Norris, seen the
- 17 pictures?
- 18 MR. DRIVER: To the best of my
- 19 knowledge he has not. If he would like to

20 review them. THE COURT: What forbade him 21 from seeing them before court? 22 RECROSS-EXAMINATION 23 BY MR. TICKLE: 24 36 1 Q. One other question, Mr. Lee. Did you 2 say that you paid Mr. Norris in full; is that 3 correct, sir? That's correct. Α. MR. TICKLE: Thank you, sir. 5 THE COURT: Do you have a copy -- is it correct that you have no objection? 7 MR. NORRIS: Ma'am? THE COURT: Is is correct that 9 you have no objection to the photographs? 10 MR. NORRIS: No. Where he's got 11 12 those things marked, he had me putting pipe in them, in the wall. And the wall wasn't 13 supposed to be, if I remember right. It was 14 either 2 foot or 30 inches off. It wasn't 15 16 any elevation shown. I wasn't given any plans. They just came out and showed me 17 where they wanted the wall. I wasn't given 18 any plans on it. If he's got some let him 19 20 show them.

THE COURT: And that's

22	essentially a comment on the pictures, but
23	you've not objected to the pictures.
24	MR. NORRIS: I'm just commenting
	37
1	on it, but that's after many, many years of
2	water running over the top of it.
3	THE COURT: Okay. I don't hear
4	that as a substantiative objection. I'll
5	enter the two pages as Collective Exhibit 3.
6	And let me ask Mr. Driver, does Mr.
7	Lee have sufficient copies of those to
8	distribute to the board members or will board
9	members need to examine them one by one and
10	then kind of pass them around?
11	MR. DRIVER: Those are the only
12	copies that I have, Your Honor.
13	THE COURT: Those are originals?
14	MR. DRIVER: Yes.
15	MR. NORRIS: It's not on the
16	judgment, which I've never really known much
17	about and I am going to answer for that.
18	THE COURT: Right. And
19	certainly that would be on your list of
20	things to comment on when you testify.
21	MR. NORRIS: Because I had
22	open-heart surgery at that time and didn't

	38
1	certainly you will be able to testify in that
2	regard. Since those are your original
3	pictures, Mr. Lee, I would like to ask the
4	court reporter to simply reserve Collective
5	Exhibit 3. Let's not mark on his originals.
6	But I guess at the conclusion of the hearing
7	or else in between the close of the proof or
8	charge to the Board if the State could work
9	with the staff here at the Holiday Inn to
10	make copies so the board members will have
11	copies to read let's do that. But you can
12	certainly circulate the originals, but let's
13	not mark on them. We're going to have copies
14	made for the board members and for entry into
15	the record.
16	(The above-mentioned document
17	was marked as Collective Hearing Exhibit
18	Number 3.)
19	Since you're closer to this board
20	member you might want to start at this end.
21	All right. And next question for Mr.
22	Lee, please.
23	CROSS-EXAMINATION
24	BY MR. SMITH:

even know what was going through.

THE COURT: All right. And

- 1 Q. Do you have a copy of plans that
- 2 you've referred to?
- 3 A. I don't have a copy of the plans
- 4 right not, but I can certainly provide a copy
- 5 of the plans.
- 6 MR. SMITH: Mr. Driver that
- 7 would be quite important since that's all he
- 8 referred to there.
- 9 BY MR. SMITH:
- 10 Q. Did you order some extra dirt, maybe
- some fill or top soil or something?
- 12 A. I ordered extra dirt at the advice of
- 13 Mr. Norris.
- Q. Was that an extra charge?
- 15 A. Yes, sir.
- 16 Q. You paid in full for that?
- 17 A. Yes, sir.
- 18 Q. How much did you pay Mr. Norris?
- 19 A. For the dirt?
- Q. No. Total.
- 21 A. Total, 13,600.
- 22 Q. How much did you pay to get the work
- 23 completed?
- 24 A. I had to pay an additional 4000 to

- 1 get all the work completed and to fix the
- 2 steps.
- 3 Q. Do you have a copy of that contract?
- 4 A. I do not have a copy of that
- 5 particular contract.
- 6 To answer your previous question, the
- 7 drain in the bottom part of the patio was not
- 8 for water coming over the retaining wall. It
- 9 was for rain and other water that would
- 10 collect in the back patio.
- 11 MR. TICKLE: In these pictures
- we don't see the steps that seems to be a big
- problem. I see one step. That's two steps,
- 14 but the elevation wouldn't have a lot to do
- with the fact that you get one, two, or three
- steps. It's not a necessary need. You may
- say three steps, but depending on the
- 18 elevation of the land may not have to have
- 19 three steps. That's where you've got to rely
- 20 on --
- 21 THE COURT: And let the record
- 22 reflect that Mr. Lee is providing Mr. Driver
- 23 additional photographs, which are now being
- 24 provided to Mr. Norris for review.

- 1 MR. OWENS: Mr. Lee, my question
- 2 is directed at the wall only and not the
- 3 patio. I heard the Defendant testify that he
- 4 built a retainage wall to keep water from
- 5 coming across the walk. I don't know what
- 6 happened on the patio about drain, but he did
- 7 state that he built a retention wall to keep
- 8 water from flowing cross the walk.
- 9 THE WITNESS: That's correct. I
- 10 don't dispute that, sir. And actually, I do
- 11 have a copy of the other contract.
- 12 BY MR. SMITH:
- 13 Q. Is that a licensed contractor?
- 14 A. Yes, sir.
- 15 Q. Did you ask to see Mr. Norris's
- 16 license?
- 17 A. I don't believe my wife asked to see
- 18 his license.
- 19 Q. So it didn't make a difference to you
- if he had a license or not?
- 21 A. Well, I believe the question was
- 22 asked and he did answer in the affirmative
- 23 that he did have a license. My wife didn't
- follow up to actually request it.

- 2 A. Yes, sir.
- 3 Q. You believe that?
- 4 A. Yes, sir.
- 5 Q. But you didn't ask?
- 6 A. I didn't ask it.
- 7 Q. I don't know if you can testify to
- 8 what your wife said.
- 9 A. Well, I can't and that would be
- 10 hearsay, but my wife did get three bids and
- 11 she did ask each of them.
- 12 O. That is fine.
- 13 THE COURT: Let me ask
- Mr. Norris, do you have objection to proposed
- 15 Exhibit 4, which is a single photo?
- MR. NORRIS: Not really. I put
- it in like his wife told me to put it in. I
- 18 was dealing with his wife, but he was doing
- 19 all the arguing on the tail end. The job was
- 20 over with when he got involved.
- 21 THE COURT: All right.
- 22 Collective 4 is admitted without objection.
- 23 It's Mr. Lee's original. Correct?
- MR. DRIVER: Correct.

- 1 THE COURT: So copies will need
- 2 to be made and marked Collective Exhibit 4 as
- 3 well. With regard to the contract, is that

- 4 your original, Mr. Lee?
- 5 THE WITNESS: Unfortunately,
- 6 that is my original, Your Honor.
- 7 (The above-mentioned document
- 8 was marked as Collective Hearing Exhibit
- 9 Number 4.)
- 10 THE COURT: All right. Then
- 11 let's see if there's an objection. Assuming
- for sake of argument that there isn't, then
- copies will need to be made of Exhibit 5 as
- 14 well. Any objection?
- MR. NORRIS: Is this it?
- 16 THE COURT: That's what he
- 17 asserts, yes.
- MR. NORRIS: Is this five?
- 19 THE COURT: Yes.
- MR. NORRIS: I don't have an
- 21 objection.
- 22 THE COURT: All right. Then
- that just like Exhibit 4 can be handed from
- 24 board member to board member. But before

- 1 they enter the decision phase of the hearing,
- 2 copies will be made and labeled so that each
- 3 board member can have their individual copy
- 4 of that exhibit to consider as they make

5 their decision. (The above-mentioned document was marked as Hearing Exhibit Number 5.) 7 THE COURT: Yes, ma'am. MS. DeBUSK: Oh, I have a 9 10 question for Mr. Lee. 11 THE COURT: Certainly, please 12 proceed. 13 CROSS-EXAMINATION BY MS. DeBUSK: 14 15 You have a patio and you want to have work done and Mr. Norris states he did it 16 17 like your wife told him to do it. You stated you contacted what you believe to be three 18 19 contractors to get an estimate for this work. 20 Did you have drawings or did you rely 21 on the contractor to give you drawings of how you wanted it? 22 23 No. My wife had another contractor, Mr. Tom Pellet, produce drawings for the 24 45

1 backyard including the retention wall and the

- back patio. Those drawings and those plans
- 3 were provided to Mr. Norris.
- Q. Okay. I've just never heard of it
- 5 put, "I did it the way I was told to do it."
- 6 If you're a contractor I just think

- 7 that's an odd statement is why I was wanting
- 8 to clarify how it came about?
- 9 A. That's why the original bid
- 10 specifically said pour concrete patio per
- 11 plans because plans were provided.
- MS. DeBUSK: And for Dr. Driver,
- in the allegations of fact, I don't see
- 14 anything where it's talking about elevation
- and water and drainage. Is this new
- information? I'm not sure why we're talking
- 17 about that part.
- MR. DRIVER: The Board proposed
- 19 questions to Mr. Lee regarding that
- 20 information.
- 21 THE COURT: Are you asking
- 22 Mr. Lee or asking Mr. Driver?
- MS. DeBUSK: I'm asking Mr.
- Driver why we're talking about elevations and

- 1 water when it's not an allegation of fact.
- 2 THE COURT: Well, I would say
- 3 the Board within it's wisdom certainly has
- 4 the ability after conferring with other board
- 5 members on the record to decide what matters
- 6 have been alleged, what matters may be not
- 7 alleged, and therefore not subject to this

- 8 hearing.
- 9 MS. DeBUSK: Okay.
- 10 BY MS. DeBUSK:
- 11 Q. Another question, Mr. Lee. I've seen
- 12 pictures of two steps, but you mentioned
- three steps. What's going on here?
- 14 A. There were supposed to be three
- 15 steps. The reason you see the rulers is to
- show that what he created was against the
- initial retention wall. He created one step,
- but that step was 10 inches high. So we
- 19 didn't really consider that to be a step.
- 20 Q. Currently you have three steps?
- 21 A. Correct.
- Q. Where we're seeing one step?
- 23 A. Correct. We have three graduated
- 24 steps.

- 1 MR. TICKLE: The one that we see
- 2 has been torn out and then three have been
- 3 put in its place. Correct?
- 4 THE WITNESS: That's correct.
- 5 MR. TICKLE: We understand.
- 6 MS. DeBUSK: Yes.
- 7 THE COURT: Did the board
- 8 members have additional questions for
- 9 Mr. Lee?

- 10 THE BOARD: (Nonresponsive.)
- 11 THE COURT: No. All right.
- 12 Then your next witness.
- MR. DRIVER: The State will call
- Mr. Randy Lawson.
- 15 RANDY LAWSON,
- 16 having been previously duly sworn, was
- 17 examined and testified as follows:
- 18 DIRECT EXAMINATION
- 19 BY MR. DRIVER:
- 20 Q. Would you state your name for the
- 21 record, please.
- 22 A. My name a Randy Lawson.
- 23 Q. Are you familiar with Mr. Virgil
- Norris, Mr. Lawson?

- 1 A. Yes, I am.
- Q. How are you familiar with Mr. Norris?
- 3 A. Well, I was referred to him by a
- 4 friend who had concrete installed at his home
- 5 and that's how I came to know him. I was
- 6 given the contact information, I called him,
- 7 and he came out to take a look at the home.
- Q. And if you could speak up, I think,
- 9 for the benefit of both Mr. Norris, the
- 10 Board, and the court reporter, I think that

- 11 would be good.
- 12 A. Yeah, I'll try my best.
- 13 Q. I'm going to give you a document to
- 14 review. Do you recognize this document,
- 15 Mr. Lawson?
- 16 THE COURT: And has Mr. Norris
- 17 been provided a copy also?
- 18 MR. DRIVER: (Provides copy to
- 19 Mr. Norris.)
- 20 A. Yes, I do recognize this document.
- 21 BY MR. DRIVER:
- 22 Q. Could you identify that document?
- 23 A. This is the original
- 24 contract/proposal that Mr. Norris gave me

- where he proposed to remove the existing
- 2 driveway grade for a new driveway, remove and
- 3 replace front steps, and pour 4500 square
- foot of concrete, the total amount, payment
- 5 terms, etcetera.
- 6 Q. What was the amount of that contract,
- 7 Mr. Lawson?
- 8 A. That contract was a total of \$15,100.
- 9 Q. Is what you have a true and correct
- 10 copy of that contract to the best of your
- 11 knowledge?
- 12 A. To the best of my knowledge, yes.

13 MR. DRIVER: The State would 14 move that be entered as the next numbered 15 exhibit, Your Honor. THE COURT: Do you have any 16 17 objection to entry of the document? 18 MR. NORRIS: This one? 19 THE COURT: Yes. MR. NORRIS: No. 20 21 THE COURT: There being no objection, the document is entered at this 22 23 time as Exhibit 6. I ask if the court

50

1 which Mr. Lawson has testified.

2 And Mr. Driver, do you wish copies of

reporter would please marked the copy from

3 Exhibit 6 circulated to the board members at

4 this time?

24

5 MR. DRIVER: Yes, Your Honor.

6 THE COURT: If you would please

7 so circulate.

8 (The above-mentioned document

9 was marked as Hearing Exhibit Number 6.)

10 BY MR. DRIVER:

11 Q. Now, Mr. Lawson, where is your home

12 located?

13 A. It's located at 2582 Rosehaven in

- 14 Germantown, Tennessee.
- 15 Q. Is that in Shelby County?
- 16 A. That is in Shelby County, yes.
- 17 Q. What date was this proposal given to
- 18 you?
- 19 A. I think the date on the top of the
- 20 proposal is November 18th, 2005.
- 21 Q. And did you inquire to Mr. Norris or
- 22 did he make any representations as to being
- 23 licensed?
- 24 A. Yes. During the visit to the home

- 1 where we discussed this job, what I wanted
- 2 done he discussed at length just how much
- 3 experience he has in the concrete business
- 4 including road building, etcetera. You know,
- 5 how long has he been a contractor, you know,
- 6 how long he had a contractor's license. I
- 7 mean, all that conversation took place and he
- 8 represented to me he was a licensed
- 9 contractor. I assumed that he was given the
- 10 conversation.
- 11 Q. Did Mr. Norris perform the work
- 12 described in the contract?
- 13 A. Yes, he did perform the work. Not to
- satisfaction, but he did perform the work.
- 15 Q. And what was unsatisfactory about the

- work he performed?
- 17 A. Well, the contract stated that the
- 18 replacement concrete and the driveway would
- 19 be graded properly. And about two days after
- 20 the work was complete water began to flow
- 21 into the garage. So the pitch of the
- 22 concrete or the grade of the drive was not
- 23 completed properly. Even the thickness of
- 24 the existing garage, the concrete was more

- 1 than 8 inches. And the concrete that was
- poured came up level to it. If he simply
- 3 would have dropped it an inch it would have
- 4 prevented the flooding. I mean, just any
- 5 amount of engineering would have prevented
- 6 the flooding of the garage.
- 7 Q. Do you have pictures, although they
- 8 may be originals of the problems you were
- 9 having?
- 10 A. I do indeed. This condition
- 11 continues. I took these pictures just a few
- 12 days ago upon our rain showing that both the
- new garage pad that he poured and the
- 14 existing garage, the water comes into the
- 15 garage. There's other parts of the concrete
- that he poured that he did not pour a 4-inch

17	thick concrete where the concrete in the
18	driveway so, therefore, dirt is being exposed
19	to the driveway in some areas.
20	I did express my dissatisfaction
21	quickly after the job.
22	THE COURT: Please note that the
23	witness has just given to Mr. Driver
24	originals of proposed Collective Exhibit 7.
	53
1	Those are now being reviewed by Mr. Norris.
2	Do you have any objection to the

Do you have any objection to the

entry of the photos?

MR. NORRIS: Not any. I have a

statement to make.

THE COURT: And certainly you'll

have a comment that you can make during your

testimony.

There being no objection they're entered as Collective Exhibit 7 just as the cause with Collective Exhibits 3, 4, and single Exhibit 5. Because these are the original, the board members can hand them from one board member to another, but at the recess copies will be made and Collective Exhibit 7 will be marked at that time and each board member will have his or her on copy of Collective Exhibit 7.

- 19 That Collective Exhibit is it with
- you, Mr. Norris, at this time or where is it?
- MR. NORRIS: Yeah. Oh, you're
- talking about this?
- THE COURT: Right.
- 24 Those are the originals that will be

- 1 circulated among the board members, and at
- 2 recess copies will be made to mark an
- 3 original and so that each board member can
- 4 have their own copy for purposes of
- 5 deliberation and discussion.
- 6 (The above-mentioned document
- 7 was marked as Collective Exhibit Number 7.)
- 8 BY MR. DRIVER:
- 9 Q. Mr. Lawson, do you recall getting a
- 10 final billing statement after Mr. Norris
- 11 allege the work to be done?
- 12 A. Yes, I do.
- 13 Q. Can you review this document?
- MR. DRIVER: Copy has already
- 15 been provided to Mr. Norris.
- 16 THE COURT: Oh, okay.
- 17 A. (Witness complies.)
- 18 Yes, that is the final bill that he
- 19 gave me after the work was completed. I can

- 20 explain some of the line items.
- 21 BY MR. DRIVER:
- 22 Q. By all means go ahead and explain.
- 23 A. Well, one of the line items is 2 feet
- 24 extra length on the garage. He decided to

- 1 charge me \$200 when his people didn't match
- 2 the depth of my original garage. The
- 3 original garage was 22 feet deep. The garage
- 4 that we were adding, his men performed it at
- 5 20 feet. When I came home and discovered
- 6 that, well, it's got to be the same depth, so
- 7 they went ahead and added another 2 feet. He
- 8 added that as an additional line item.
- 9 We did add to the job in the middle
- of it to extend kind of a parking pad on the
- 11 side or in front of the new garage. So that
- 12 resulted in 240 square feet. We ended up
- 13 talking back and forth about why he's
- 14 charging me for the step when it's included
- in the original contract. But anyway we
- 16 negotiated back and forth and I ended up
- 17 paying him an extra \$1200.
- In the original contract he did
- 19 guarantee that all the work would be
- 20 guaranteed for ten years against any defects.
- 21 Like I've testified before within two days we

- 22 discovered there is a defect in the
- 23 installation of the concrete and I contacted
- him directly and so forth. Anyway, the total

- amount that I paid him was \$16,338. And he's
- 2 acknowledging it on this document.
- 3 Q. Is that handwriting to the best of
- 4 your knowledge that of Mr. Norris?
- 5 A. Yes.
- 6 Q. Is what you have a true and correct
- 7 copy of that document?
- 8 A. Yes.
- 9 MR. DRIVER: I move to be
- 10 entered, Your Honor.
- 11 THE COURT: I understand Mr.
- Norris, you received a copy of proposed
- 13 Exhibit 8 earlier. Do you have any objection
- 14 to it. You may make comments, but do you
- 15 have any objections to it?
- MR. NORRIS: No, I don't have
- any comments.
- 18 THE COURT: All right then. The
- 19 final bill is admitted at this time as
- 20 Exhibit 8 and I think the State does have
- 21 copies of that; is that correct?
- MR. DRIVER: That's correct.

- 23 (The above-mentioned document
- 24 was marked as Hearing Exhibit Number 8.)

- 1 THE COURT: Will you please
- 2 distribute that to the board members.
- 3 MR. DRIVER: Thank you, Judge.
- 4 BY MR. DRIVER:
- 5 Q. Now, I believe you said you spoke
- 6 with Mr. Norris shortly, I believe, you said
- 7 two days after that bill. What was said in
- 8 that conversation?
- 9 A. He said he would take care of it;
- don't worry about it. You know, he'll get to
- it as soon as he can. I continued to call
- 12 him. I'll get to it as soon as I can. And
- here we are four and a half years later and
- 14 we haven't gotten to it yet.
- 15 Q. Did you send Mr. Norris a letter
- letting him know that you still had problems
- 17 with his work?
- 18 A. As a matter of fact, I did. About 60
- 19 days later I sent him a letter.
- 20 Q. Could you review this document and
- 21 let me know if that's a true and correct copy
- of that letter?
- 23 A. Yes, sir, that is a copy of the
- 24 letter I sent him.

Q.

1

What was the content of that letter

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just briefly?
 3
           Α.
                    The crux of it is I was giving him
           ten more days in writing to come out and
 5
           remedy the issue or refund the money, you
 6
           know. We have a guarantee here. I've stated
           in a letter that I've notified him via phone
 7
           four times over the last 60 days and each
 8
 9
           time he promised that it would be all
10
           straightened out, don't worry about it.
11
           Anyway he then -- as of now, the problem has
12
           not been corrected, nor has he been on site,
           nor have I received a refund.
13
                        MR. DRIVER: The State would
14
15
           move that be entered as the next numbered
           exhibit.
16
                        THE COURT: Has it been shared?
17
                        MR. DRIVER: Yes, it has, Your
18
19
           Honor.
                        THE COURT: Well, Mr. Norris?
20
21
                        MR. NORRIS: Ma'am?
22
                        THE COURT: Have you seen a copy
23
          of proposed Exhibit 9?
                        MR. DRIVER: A letter dated
24
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- 1 January 23rd, 2006, 10-day notice.
- 2 MR. NORRIS: No, I just told the
- 3 price.
- 4 THE COURT: Well, it's a letter
- 5 concerning -- allegedly Mr. Lawson wrote to
- 6 you asking you to either fix the alleged
- 7 problem or to refund the money.
- 8 MR. NORRIS: Can I get a copy of
- 9 that one?
- 10 THE COURT: All right. And you
- 11 have no objection with that being introduced?
- MR. NORRIS: No, ma'am.
- 13 THE COURT: All right. The
- document is entered at this time as Exhibit
- 9. Copies are available?
- MR. DRIVER: They are, Your
- Honor.
- 18 THE COURT: And it may be
- 19 distributed to the board members at this
- 20 time.
- 21 (The above-mentioned document
- was marked as Hearing Exhibit Number 9.)
- 23 BY MR. DRIVER:
- Q. I believe you've already stated this,

- 1 but has any of your problems with
- 2 Mr. Norris's work been rectified?
- 3 A. No, not at all. I've not hired
- 4 another contractor to repair it.
- 5 Q. Is there any further information you
- 6 feel is pertinent to your dealings with Mr.
- 7 Norris, Mr. Lawson?
- 8 A. No. I think that describes the issue
- 9 of the work completed, the failure to
- 10 guarantee, etcetera, it's all been covered.
- MR. DRIVER: Nothing further
- 12 from this witness, Judge.
- 13 THE COURT: Mr. Norris, do you
- have any questions for this witness?
- MR. NORRIS: No.
- THE COURT: Board members?
- 17 CROSS-EXAMINATION
- 18 BY MR. OWENS:
- 19 Q. Mr. Lawson, you mentioned depth and
- 20 width. Now, depth to me means this. You
- 21 mentioned two feet --
- 22 A. Oh, I'm sorry.
- 23 Q. So you really meant width where he
- 24 poured concrete to the front of the garage?

1 A. Yeah, from the front of the garage to

- 2 the back of the garage the depth would be 22
- 3 feet. That's what I was trying to refer, not
- 4 down this way. I guess what would you call
- 5 that, from the front to the back of the
- 6 garage, what would be the proper term?
- 7 Q. All right. That is the depth. I
- 8 didn't think you meant --
- 9 A. No. No, it's not 22 feet down. The
- 10 concrete was originally poured at 20 feet.
- 11 Should have been at 22.
- 12 Q. Okay.
- 13 CROSS-EXAMINATION
- 14 BY MR. TICKLE:
- 15 Q. Did you ever see his license?
- 16 A. No, sir, I did not.
- 17 Q. You did pay him in full?
- 18 A. I paid him in full.
- 19 Q. With the negotiated price? It kind
- of came to that.
- 21 A. Yes, sir.
- 22 Q. I'm sorry. Did you say you did hire
- a new contractor to come in there?
- A. No, I have not.

- 1 MR. TICKLE: Thank you. That's
- 2 it.
- 3 CROSS-EXAMINATION

- 4 BY MR. SMITH:
- 5 Q. Did he say he had a home improvement
- 6 license?
- 7 A. No, I don't recall that part of the
- 8 conversation. Since I'm unaware of that term
- 9 I probably didn't ask. We just had a long
- 10 conversation about --
- 11 Q. He might have a license.
- 12 A. He might have a license of some kind,
- you know.
- 14 Q. It's not a home improvement license?
- 15 A. Yeah. It's just my assumption that
- 16 everything was fine. Since he was referred
- to me by a friend, that's my assumption.
- 18 CROSS-EXAMINATION
- 19 BY MR. BRODD:
- Q. Did you pay him prior to the rain.
- 21 A. Yeah, I paid him prior to the rain.
- 22 At the completion of the job we settled up.
- THE COURT: Board members,
- 24 additional questions of the witness?

- 1 Your next witness, please.
- 2 MR. DRIVER: The State call will
- 3 call Telise Roberts.
- 4 TELISE ROBERTS,

- 5 having been previously duly sworn, was
- 6 examined and testified as follows:
- 7 DIRECT EXAMINATION
- 8 BY MR. DRIVER:
- 9 Q. State your name for the record,
- 10 please?
- 11 A. Telise Roberts.
- 12 Q. What is your job?
- 13 A. Assistant director of the contractors
- 14 board.
- 15 Q. What are your duties in that
- position, Ms. Roberts?
- 17 A. Various licensing and renew laws,
- 18 complaints.
- 19 Q. Do you have access to and knowledge
- of the database showing who has a license and
- 21 who does not?
- 22 A. I do.
- 23 Q. And have you confirmed whether or not
- 24 a Mr. Virgil Norris or a Southern Concrete

- 1 Company in Cordova, Tennessee hold either a
- 2 contractor's license or a home improvement
- 3 contractor's license in the time period of
- 4 2004 until the present?
- 5 A. I have.
- 6 Q. And are you aware of the home

- 7 improvement law?
- 8 A. Yes.
- 9 Q. Are you aware if Shelby County had
- 10 adopted that law from the date of 2004 until
- 11 the present?
- 12 A. Yes.
- 13 Q. Are you aware of the approximate date
- when Shelby County had adopted that law?
- 15 A. Yes.
- MR. DRIVER: Nothing further
- 17 from this witness, Judge.
- 18 THE COURT: Cross-examination,
- Mr. Norris; questions for the witness?
- MR. NORRIS: No questions.
- THE COURT: Board members,
- 22 questions for the witness?
- 23 CROSS-EXAMINATION
- 24 BY MR. OWENS:

- 1 Q. Has there ever been a monetary limit
- on licensing, you know, if you don't have?
- 3 He mentioned that it didn't require a license
- 4 if the amount was under \$25,000.
- 5 Has that ever been the law?
- 6 A. That's a home improvement law that
- 7 anything of 3000 to under 25 in eight

- 8 counties.
- 9 Q. That is effective in Shelby County?
- 10 A. Yes.
- 11 Q. So at that particular time he didn't
- have to have a home improvement license?
- 13 A. In '04 -- I don't have the exact date
- 14 that Shelby County adopted it. They adopted
- 15 it into law. It became effective in nine
- 16 counties at that time. That was 2001 maybe.
- MR. SMITH: Can anybody else
- 18 tell us when these eight or nine counties
- were brought under the law? Mr. Driver?
- MR. DRIVER: It was Ms.
- 21 Roberts's testimony, I believe, already that
- 22 to her knowledge they had adopted it in 2004
- 23 until present.
- 24 I asked the question, if the court

- 1 reporter has that?
- 2 MR. SMITH: I thought she said
- 3 she wasn't sure.
- 4 A. Of the original date that the law
- 5 went into effect, I can find out for sure. I
- 6 know in '04 Shelby County was still on the
- 7 list. They've never come off the list.
- 8 BY MR. OWENS:
- 9 Q. Even presently Shelby County does not

- have to have a license if it's under \$25,000?
- 11 A. No, they would have to have a home
- improvement license.
- 13 Q. If it's under \$25,000?
- 14 A. Correct.
- MR. TICKLE: Could you find out
- 16 when Shelby County initiated that.
- 17 THE WITNESS: Whenever they did
- 18 that.
- 19 THE COURT: Let me say, Mr.
- 20 Driver, I think the board members have
- 21 suggested that that date may, in fact, be
- 22 material and want the witness to confirm that
- 23 date with Shelby County authorities.
- 24 MR. DRIVER: I have no problem

- 1 with that if she can confirm that if Mr.
- 2 Norris has no issue with us taking a brief
- 3 break.
- 4 THE COURT: Would that be a
- 5 problem? Would you rather her confirm that
- 6 date? Do you have an objection to her
- 7 confirming that date?
- 8 MR. NORRIS: Yeah, I think we
- 9 need to confirm it because when I called they
- 10 told me what the law was, and I did call.

11	And nobody ever told me any different. Now,
12	it could have been before that was changed,
13	but I want to go on the record that I did
14	call and I got a privilege license from the
15	State and the County and the City of Memphis,
16	Bartlett, Germantown, and all of them. I
17	wouldn't have gone to all that trouble if I
18	was going to do something illegal.
19	MR. DRIVER: I believe Ms.
20	Roberts could verify with the state office
21	who I believe keeps a record that you are the
22	assistant director; is that correct, Ms.
23	Roberts?
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1	THE COURT: All right. Then
2	let's ask the witness if she would please do
3	that. And as a practical matter, let me ask
4	the board chair, did you want to recess now
5	to permit the witness to find out that
6	information or did you simply want the
7	hearing to continue, the witness be released
8	to make that call, and then be recalled once
9	she has the information?
10	MS. DeBUSK: The hearing to
11	continue, release Ms. Roberts to find the
12	information, and we continue the testimony.

13	THE COURT: All right. And
14	Mr. Norris has a comment.
15	MR. NORRIS: I called the State
16	Board of General License Contractors. They
17	told me I didn't need a license up to a
18	certain amount of money. I also called home
19	improvement and they said the same thing.
20	THE COURT: Okay, and certainly
21	
22	MR. NORRIS: I was informed.
23	THE COURT: Right. And that's
24	going to be part of your testimony, sir.

1	This witness is released for the
2	purpose of making that call. Please do not
3	discuss your testimony with any other persons
4	prior to your coming back and giving that
5	testimony.
6	Your next witness, Mr. Driver?
7	MR. DRIVER: The State has
8	nothing further, Judge.
9	THE COURT: Mr. Norris, this is
10	your opportunity to testify before the board
11	members in full on any and all issues that
12	have been raised during this hearing as well
13	as any comments on documents that have

14 entered. You may proceed, sir. 15 VIRGIL L. NORRIS, having been previously duly sworn, testified 16 17 as follows: MR. NORRIS: Number one, I'm 18 19 going to comment on Mr. Lawson's job. On the 20 front end we didn't know that we were going 21 to have a problem drainage-wise with the 22 driveway. We tore it out and I went to Mr. 23 Lawson and told him that we needed to put a 24 wall on the left side of the driveway as

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1 you're going in the house. If you didn't was put a wall there you were going to have a problem with water. I did tell him that. 3 But he didn't want a put a wall there. So I poured it like it was. 5 As far as work. I think there was 6 some work on there that he paid extra for. 7 Am I right or wrong? 8 9 THE COURT: Mr. Norris, this is 10 not an opportunity for discussion between the two of you. This is your opportunity to give 11

MR. NORRIS: Yes, ma'am. Okay.

There was a little extra work done because he had a bunch of old cross ties between the

the Board your testimony.

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13

14

front of the house and back to the garage.

And we worked on those the best we could to

get the driveway in and do it right. And as

far as the step I know it was completed at

the time. It was good and so that pretty

well took care of that.

But going back to Mr. Wong, the

reason the contract was not completed on time
he added work. He added dirt, he added

23

24

1	tearing down a porch that went across about a
2	30 or 40-foot building in the backyard. He
3	had a big chain holding it up. That was one
4	of the things. As far as him giving me a
5	survey or giving me a plan for the steps, I
6	asked his wife. I put them in and then asked
7	her was that okay and she said yes, so we
8	poured it. We got it approved before we did
9	it. I didn't get any plans on extra steps.
10	It was only one. The existing wall, we
11	didn't have grades on that. And it was deep.
12	We brought in, I believe, it was four
13	tandem loads of dirt and I only charged him
14	what I was charged, \$300 a load. And we put
15	it in. It raised the grade up. He told me
16	he was going to have a garden back there.

- 17 The kind of special garden that they have in
- other countries, I guess. But that's what I
- was told.
- These two complaints are the only two
- 21 complaints I've had in 52 years. I think
- that's a pretty good record. Just people
- 23 trying to get something for nothing and won't
- listen to what you're trying to tell them and

- don't want to pay to get it done. That's all
- 2 I have to say.
- THE COURT: Cross-examination?
- 4 MR. DRIVER: Just briefly, Your
- 5 Honor.
- 6 CROSS-EXAMINATION
- 7 BY MR. DRIVER:
- 8 Q. Mr. Norris, I believe I heard you say
- 9 in an objection earlier during Mr. Lee's
- 10 testimony that you weren't given any plans?
- 11 A. No, sir.
- 12 Q. You signed a document, didn't you
- that said you were given plans, sir; isn't
- 14 that correct?
- 15 A. No, I don't think so.
- 16 Q. If I can refer you back.
- 17 A. If I did I signed something and
- 18 didn't know what I was signing.

- 19 Q. So you make a habit of signing things
- that you don't know what are, Mr. Norris?
- 21 A. I don't have a habit of doing nothing
- 22 wrong. You've got it?
- 23 Q. I believe this says, and it's in the
- 24 first document given to you by Mr. Lee. It

- 1 says: "Pour sidewalk per plans, pour one
- 2 circle 2-foot wall and steps per plans."
- 3 A. They never did give me any. Did he
- 4 produce any plans?
- 5 Q. I'm asking you. So you're saying you
- 6 signed a document that said per plans, but
- 7 there were no plans?
- 8 A. I didn't have any plans. They came
- 9 back and showed me where she wanted it. You
- don't really need a plan to build a 2-foot or
- 30-inch wall if they show you where it needs
- 12 to go.
- MR. DRIVER: Nothing further,
- 14 Your Honor.
- THE COURT: Board members,
- questions for the witness?
- 17 CROSS-EXAMINATION
- 18 BY MR. TICKLE:
- 19 Q. Mr. Norris, did you ever pull a

- 20 permit on either job?
- 21 A. No, sir.
- 22 Q. As long as you've been in business
- 23 don't you --
- 24 A. I was behind the sidewalk, didn't

- 1 have to. Mr. Lawson was supposed to pull
- 2 his. He worked for the City of Germantown.
- 3 He was going to pull a permit.
- 4 Q. So it is your contention that the
- 5 home owner was going to pull the permit and
- 6 you were just going to do the work for the
- 7 home owner; is that correct, sir?
- 8 A. That's correct. If the sidewalk
- 9 hadn't fell in, as far as I know I never
- 10 pulled a permit, but the sidewalk on Mr.
- Wong's job had fell in is the only reason we
- 12 replaced that. That wasn't in the original
- agreement.
- 14 Q. I'm just real curious of your
- 15 guarantee on concrete.
- 16 A. Sir?
- 17 Q. I'm curious of your guarantee on
- 18 concrete that you're going to guarantee it
- 19 for ten years. I don't know anybody that can
- 20 guarantee concrete, but you did a good job so
- 21 you guaranteed it?

- 22 A. Yeah, I can fix, repair concrete,
- yes, sir, I did.
- Q. That's highly unusual.

- 1 A. I know it is.
- 2 Q. I don't know anybody that can
- 3 guarantee concrete.
- 4 A. Well.
- 5 Q. But you did a good job since you
- 6 guaranteed it?
- 7 A. I did.
- 8 MR. TICKLE: That's all I have.
- 9 CROSS-EXAMINATION
- 10 BY MS. DeBUSK:
- 11 Q. Mr. Norris, when you called the State
- to ask if a license is needed, do you know
- 13 who you spoke with?
- 14 A. No, ma'am. I called both boards, the
- 15 home improvement board and I believe it was
- in Nashville and the General Contractors
- 17 Board in Nashville.
- 18 Q. Do you know who you spoke with at the
- Home Improvement Board?
- 20 A. No, ma'am, I sure don't.
- 21 Q. Or the Contractors Board?
- 22 A. It's been a long time now. I've got

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to where I don't remember real well. I'm 77
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years old.

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1	MR. TICKLE: Typically, when you
2	pour a driveway, do you usually leave a lip?
3	In other words, if you have a garage and
4	you're going to pour a driveway, do you
5	typically leave a lip?
6	THE WITNESS: Normally we do,
7	but he didn't want it. He had all these
8	cross ties going down. I knew that was going
9	to be a problem because the water was coming
10	from the back-end and it's going to have to
11	back up. You've got them sticking out to
12	8-foot approximately.
13	BY MS. DeBUSK:
14	Q. Mr. Norris, do you think of yourself
15	as an expert in concrete, in pouring
16	driveways? Do you think of yourself as an
17	expert when it comes to concrete?
18	A. I sure do after 52 years.
19	Q. And your reputation is on the line
20	when you do the work?
21	A. Yeah.
22	O And if an untrained person that's no

trained in concrete tells you they don't want

something, it's your work, so you just said

- 1 okay, I won't do it?
- 2 A. I didn't hear it. I'm sorry, I just
- 3 don't hear right.
- 4 THE COURT: If the court
- 5 reporter could please read the board member's
- 6 question back. Thank you.
- 7 (The requested portion of the record
- 8 was read back.)
- 9 A. If they tell me they don't want it
- 10 well, I'm not going to do it.
- 11 BY MS. DeBUSK:
- 12 Q. You're going to take the word of a
- 13 person that's not experienced in concrete to
- tell you how to pour your concrete?
- 15 A. They tried to.
- 16 Q. And you did what they asked you to
- 17 do?
- 18 A. Normally, yes, ma'am, in order to get
- my money.
- 20 Q. So in order to get your money, you
- 21 would do shotty work to get your money?
- 22 A. When you're pouring a driveway and
- you've got most of it poured, you're pouring
- down in front of a garage and you tell

- somebody you're going to need to put a wall.
- 2 Even after the job the wall could have been
- 3 put in. After I got through pouring the
- 4 concrete, but he didn't want to do it. He
- 5 didn't want to pay for it. I wasn't going to
- 6 do it for free.
- 7 MR. SMITH: Are we still
- 8 questioning the witness?
- 9 MS. DeBUSK: We're questioning
- 10 Mr. Norris.
- 11 CROSS-EXAMINATION
- 12 BY MR. SMITH:
- 13 Q. Are you still working to date,
- Mr. Norris, you're still actively engaged in
- the concrete business?
- 16 A. I get out a little bit and bid some
- work for different contractors.
- 18 Q. But not for home owners. You just
- 19 bid for contractors?
- 20 A. No, I don't. I've got folks I work
- 21 with and bid on for them, go look at
- 22 them.
- 23 THE COURT: Additional
- questions, board members?

- 1 Is it correct that you don't have any
- 2 additional witnesses; is that right, Mr.
- 3 Norris?
- 4 MR. NORRIS: No, ma'am.
- 5 THE COURT: And I saw
- 6 Mr. Driver's hand raised. There is one
- 7 witness to return with further information.
- 8 MR. DRIVER: Right. And I just
- 9 had one issue as to impeachment, Your Honor,
- of Mr. Norris, if I may?
- 11 THE COURT: Sure.
- MR. DRIVER: We're going to pass
- this document to Mr. Norris. We don't have
- 14 copies of it. It will be handled like the
- 15 previous one.
- 16 THE COURT: All right.
- 17 RECROSS-EXAMINATION
- 18 BY MR. DRIVER:
- 19 Q. Mr. Norris, you said you didn't pull
- 20 a permit on either home. Would you look at
- 21 that document for me and let me know what it
- 22 is?
- A. Do what?
- Q. Could you review that document for

- 2 permit. Is that not a permit from the city
- 3 of Germantown with your signature and
- 4 Southern Concrete at the bottom of it?
- 5 A. Well, I did pull a permit on that one
- 6 then. I wasn't sure.
- 7 Q. Well, it was documented that you did.
- 8 A. Yeah, that's to my advantage. Where
- 9 I have to I do it. Where I don't, the home
- 10 owners do it.
- 11 Must have been licensed pretty good
- if I got the contract, if I've got a permit
- from the city of Germantown.
- MR. DRIVER: The State would
- give that to the board members to review and
- then have it entered as the next numbered
- 17 exhibit, Your Honor.
- 18 THE COURT: All right. And
- during the recess, copies will be made of
- 20 Exhibit 10. In the meantime the original of
- 21 Exhibit 10 will be passed to board members.
- 22 (The above-mentioned document
- was marked as Hearing Exhibit Number 10.)
- 24 RECROSS-EXAMINATION

- 1 BY MR. TICKLE:
- 2 Q. Sir, could I ask you one more
- 3 question. I'm just looking at a contract

- 4 that's been given to us, signed by you in
- 5 regard to Mr. Lee's house. Did you prepare
- 6 this contract for Mr. Lee, you or your
- 7 office, let me ask you that?
- 8 A. I did.
- 9 Q. You did. The reason why I ask this
- 10 question is going back to one of our
- 11 associates' question. It says if you poured
- 12 the concrete patio per plans, per sidewalk
- plans, pour 2-foot wall and steps per plans.
- 14 When you refer to plans that would mean for
- most people that there were plans involved
- and that that's how you were able to bid your
- job and to see exactly what you were going
- 18 against. Especially in the fact that they
- 19 have testified that there was more than one
- 20 contractor involved, that everybody was
- 21 bidding on the same thing.
- Does that make sense to you what I
- 23 said?
- A. Yeah, it's possible there could have

- been something drawn up by them, you know, a
- 2 sketch or something, but as far as a plan, an
- 3 elevation, or anything like that, didn't have
- 4 it.

5	MR. TICKLE: Thank you, sir.
6	THE COURT: All right. Given
7	that the witness who's going to check with
8	Shelby County has not returned, one thought
9	might be to take a recess now before closing
10	arguments because there's additional
11	testimony, but to use that time to make
12	copies of the various exhibits that need
13	copied for the board members.
14	Let me ask of the board chair. Would
15	that seem reasonable or would you rather just
16	wait here or what's the Board's pleasure?
17	MS. DeBUSK: Do we have any idea
18	how long it's going to take her to find out?
19	MS. GRAY: She was waiting when
20	I went back there.
21	THE COURT: Was she waiting to
22	reach the Board or what?
23	MS. GRAY: I'm not sure.
24	MS. DeBUSK: Can we move on

1	without hearing that date?
2	THE COURT: Well, do both
3	parties feel that that date is material to
4	your decision? It sounds like it might be.
5	MS. DeBUSK: She testified in
5	'04 she knows for a fact it was required in

7 '04, but we want to know when it went into effect was our question. And that's what she's looking for, that date. Is that my 9 understanding? 10 MR. TICKLE: Yeah, but that 11 12 could make a big difference if he's licensed 13 or not licensed. THE COURT: I guess the parties 14 15 could give their closing arguments except for than on that paint and then see if she has 16 17 returned. MR. NORRIS: I don't have any 18 closing arguments. And I've got to leave. 19 I've got to go and get something for my nitro 20 21 pill. I'll be back in a minute. 22 THE COURT: Okay. Well, let's 23 take that recess. MS. DeBUSK: Let's take a 24

- 1 30-minute recess.
- 2 THE COURT: Let's take a
- 3 30-minute recess. That will give you an
- 4 opportunity to do that.
- 5 MR. NORRIS: I haven't got
- 6 anything else to say.
- 7 THE COURT: Most respondents

- 8 want to be present for the Board's
 9 deliberation and decision. They will decide
 10 the case.
 11 MR. NORRIS: They're going to
- MR. NORRIS: They're going to

 decide what they believe and I don't need to

 be present for that. I think they're honest

 people and they'll do the right thing.
- 15 THE COURT: Well, technically

 16 yes, you have the right to leave if you have

 17 a medical situation and you need

 18 nitroglycerin.
- 19 MR. NORRIS: I have, but I don't 20 want --
- 21 THE COURT: Is that in your car 22 or someplace close?
- 23 MR. NORRIS: Yeah. But I'm
 24 going to take one and maybe have to take two

- and then I'm going to the house. I really
 don't see any need in me staying. I have
 nothing else to say. I stated everything I
 needed to state.
- 5 THE COURT: Well, I guess we
 6 could treat it as a partial default. I mean,
 7 if you're not present. You've been present
 8 certainly for the majority of the matter.
- 9 You've heard the testimony. You've seen the

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10
          exhibits.
11
                    Do you have a cell phone so that you
12
           can participate --
                        MR. NORRIS: I'm not trying to
13
14
           be a smart aleck. I know when I've got a
15
           problem.
16
                        THE COURT: I know and I don't
           want -- that's why --
17
18
                        MR. NORRIS: And they've heard
           everything I need to tell them, I'm sure. As
19
20
           far as waiting on the lady to find out about
21
           that date, well, it will take place wherever
           it hits, you know, whenever she finds out. I
22
23
           don't think she's going to find out today.
24
                        THE COURT: And this Board meets
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tomorrow. A thought would be --1 MS. DeBUSK: No. 2 THE COURT: It doesn't? 3 MS. DeBUSK: No. THE COURT: Okay. So you 5 canceled that part of the meeting? 7 MS. DeBUSK: Yes. THE COURT: And you're saying under oath that it's truly your preference to 9 leave the meeting as opposed to recessing the 10

- 11 hearing, you get medical treatment, and come 12 back? MR. NORRIS: Right. 13 THE COURT: Well, all right. 14 That is certainly your choice and it's on the 15 16 record that that choice is made and you were 17 given some other options. MR. NORRIS: All right. Thank 18 19 you. THE COURT: All right. Thank 20 21 you, sir. 22 (Mr. Norris leaves the hearing.) MR. TICKLE: Your Honor, I've 2.3 got a call in also for the Code Enforcement 24 87 Board here in Shelby County to let them tell 1 us too in case Ms. Telise couldn't get that 2
- information. 3 THE COURT: Okay. MS. DeBUSK: Are we going to 5 take a 30-minute recess? THE COURT: Sure. Let's take a 7 30-minute recess and in the meantime could we 8 get a conference call phone so that the folks 9 that you contacted could call and make a 10 11 record of what, you know, their position was.

MR. TICKLE: Telise is going to

- find out. 13 14 MS. DeBUSK: Telise will find 15 out. THE COURT: Certainly between 16 17 the two options we'll have that information 18 in 30 minutes. 19 MS. DeBUSK: Yes. THE COURT: Let's do that. 20 21 Let's take that 30-minute recess. 22 (Recess taken from 2:33 p.m. to 23 3:21 p.m.) 24 THE COURT: We are back on the 88 record. I understand that copies of the 1
- Collective Exhibit 3, 4, and 5 and perhaps a 2 3 couple of other exhibits have been made. You would like to distribute those to the board members, please. 5 While you-all are receiving those, I know Exhibit 10 was also one of them. Were we able to get all of the exhibits copied? 8 9 MR. DRIVER: Yes. THE COURT: Okay. Great. And 10 11 then the witness who was released to get some further information, I understand has gotten 12 that information and remains under oath and 13

- has returned with that information. Why
- don't we go ahead and receive that
- information now from the witness, please, Mr.
- 17 Driver.
- 18 TELISE ROBERTS,
- 19 having been previously duly sworn, was
- 20 examined and testified as follows:
- 21 REDIRECT EXAMINATION
- 22 BY MR. DRIVER:
- Q. Ms. Roberts, you're aware you're
- 24 still under oath; is that correct?

- 1 A. Yes.
- 2 Q. I believe the Board had requested
- 3 that you find out when Shelby County had
- 4 adopted the Tennessee Home Improvement Law.
- 5 Were you able to obtain that information?
- 6 A. Yes, I was.
- 7 Q. To the best of your knowledge when
- 8 did Shelby County adopt that law?
- 9 A. June 21st, 1993.
- 10 Q. To the best of your knowledge, have
- 11 they at any time not had that law adopted?
- 12 A. No, sir.
- 13 Q. You have documents documenting one
- 14 entitled home improvement adoption dates as
- 15 well as a document from the Board of

- 16 Commissioners of Shelby County to the
- 17 Tennessee Home Improvement Commission as well
- as a resolution ratifying that public chapter
- 19 by Shelby County?
- 20 A. Yes, I do.
- Q. What you have, are those true and
- 22 correct copies of those documents?
- 23 A. Yes.
- 24 MR. DRIVER: The State would

- 1 move that those be entered as the next
- 2 numbered exhibit, Your Honor.
- 3 THE COURT: All right. They're
- 4 entered at this time as Collective
- 5 Exhibit 11. Does the State have copies?
- MR. DRIVER: We do, Your Honor.
- 7 (The above-mentioned document
- 8 was marked as Collective Hearing Exhibit
- 9 Number 11.)
- 10 THE COURT: And Collective
- 11 Exhibit 11 may be distributed to the board
- 12 members at this time along with the other
- documents.
- 14 BY MR. DRIVER:
- 15 Q. Ms. Roberts has testified for the
- 16 Tennessee Board for Licensing Contractors?

17 Α. Yes, sir. 18 MR. DRIVER: The State has 19 nothing further from this witness, Judge. THE COURT: All right. And, of 20 course, there will be no cross-examination 21 22 because the respondent is no longer present 23 in the room. 24 Let the record reflect that an offer 91 1 was made to permit him to go get his medication and to return, but he did not wish 2 to do that. Certainly, unless this Board has 3

objections the hearing can proceed in his absence. And he also waived closing arguments before he left. I asked about 6 clarification, conference call would have been another option. He did not move for a 8 continuance. So we will just continue 9 without him. 10 MR. SMITH: What would have 11 happened if he hadn't shown up this morning? 12 THE COURT: I would have asked 13 the State whether or not they had sufficient 14 documents to hold him in default in terms of 15 having received notice of the hearing. But 16 by virtue of his physical presence here 17 clearly he received notice of the hearing. 18

He knew what day to come, what time, what

place.

MR. SMITH: Can we continue

under a default at this point?

THE COURT: Essentially, it's

kind of like a partial default. He was

present and very active in the hearing until
he felt the need for his nitroglycerin, which
he said was in his car. And then his
preference was to go take one or two tablets
of the nitroglycerin and then to go home
rather than to return to the hearing. And
that is quite unusual. That's quite unusual.

Let me ask the board chair: Is there any desire by the board chair and/or the Board to discontinue the hearing, roll it to the beginning of the July docket and permit him to participate by conference call at that time? If he does not wish or is not able to travel from Memphis to Nashville or is it the wish of the board to continue in his absence? And I'll ask the board chair to entertain that question with her board members on the record.

MS. DeBUSK: Continue with his

20	absence. That's the consensus I'm hearing.
21	THE COURT: The consensus of the
22	board then it's their preference to continue
23	in his absence. Certainly, he would have
24	access to the transcript if he would like to
	93
1	know what happened in his absence and
2	certainly he'll receive a copy of the Board's
3	written decision, which would tell him in
4	summary fashion what happened.
5	All right. Did you have any
6	additional questions for your witness, Mr.
7	Driver?
8	MR. DRIVER: No, Your Honor.
9	THE COURT: Board members,
10	questions for the witness in light of her
11	additional testimony?
12	MS. DeBUSK: No additional
13	questions.
14	THE COURT: No additional
15	questions for the witness. All right. Thank
16	you.
17	Opportunity for closing arguments and
18	respondent waived closing as he was
19	departing. Would the State like to make a
20	closing argument in this matter?
21	MR. DRIVER: Just very briefly,

Your Honor.

THE COURT: Certainly, please

24 do.

1	MR. DRIVER: Board members, I
2	would refer you to the Notice of Hearing and
3	Charges passed out at the beginning of this
4	hearing to show that Mr. Norris was charged
5	with a 37-day continuing violation of the
6	home improvement law while working for
7	Mr. Samuel Lee that testified that Mr. Norris
8	did propose to do the work described in that
9	proposal on November 22, 2004, and continued
10	under that contract until at least
11	December 28, 2004.
12	And further that Mr. Norris entered a
13	contract with Mr. Lawson through a signed
14	proposal in the amount of \$15,100 to install
15	4000 pounds of limestone concrete. That all
16	of these actions occurred in Shelby County,
17	that the testimony has shown was under the
18	Home Improvement law at that time. As such,
19	I believe that the record is clear that
20	Mr. Norris committed a 43-day continuing
21	violation of the home improvement law subject
22	to a civil penalty not to exceed \$1 000 And

23 that each day may constitute a new violation. 24 The State would also request that 95 1 this Board order the cost of this hearing and 2 any investigation against the respondent. 3 That's all, Your Honor. I would point out very briefly that 5 the contracts in this matter were in excess of \$28,000. And I would request that the 7 Board take that into account to issue a civil 8 penalty commensurate with the amounts of those contracts to dissuade future actions 9 10 and make it to where acting as an unlicensed 11 contractor, be it home improvement contractor 12 or regular contractor is not profitable for those who do act without a license. That's 13 all, Your Honor. 14 15 THE COURT: All right. Thank you for your closing argument. I will now 16 17 charge the Board. 18 The Board has now heard the proof in 19 the case of Virgil L. Norris d/b/a Southern Concrete Company, Docket No. 12.14-1071248A. 20 21 The responsibilities of the Tennessee Home Improvement Commission transferred by the 22 23 legislature to you, the Tennessee Board for

Licensing Contractors.

1	The respondent is before you or was
2	before you for alleged violations of the
3	Tennessee Contractors Licensing Act pursuant
4	to Tennessee Code Annotated Section
5	62-37-1036(a) repealed, but was in effect at
6	the time of the conduct. In particular
7	Section T.C.A. 62-37-114(a) also repealed,
8	but in effect at the time of the conduct,
9	which indicated that had no person may engage
10	in or transact any home improvement business
11	except in compliance with the applicable
12	provisions. T.C.A. Section 62-37-101
13	provides for civil penalties of up to \$1000
14	per violation and investigative hearing costs
15	may also be accessed.
16	As sole and exclusive finder of the
17	facts in this matter you must conduct open
18	deliberations to make findings of fact and
19	reach conclusions of law based on the facts
20	found. Your findings must be based solely on
21	the evidence presented to you during this
22	hearing. The evidence includes the testimony
23	of witnesses, and any exhibits introduced.
24	The notice of hearing and proposed orders if

the State had submitted one would not be evidence, but may be used as a guide to assist you in making your findings. But it's the sole responsibility of the Board to make its own findings in this matter.

The parties through counsel or the Respondent when arguing this matter during opening and some portions of the hearing where he was making arguments as opposed to testifying, those arguments are basically the attorney or Respondent representing himself, making arguments and they are not evidence, but are simply that, arguments designed to persuade you to see the evidence in the light most favorable to their respective positions. Give those statements whatever, if any, consideration you feel is appropriate.

The Board must make the determination as to credibility and weight to be given to the evidence presented by each witness. If there's conflict in the testimony between witnesses it's the responsibility of the Board to reconcile those conflicts if possible. But if it's not possible to

reconcile the conflicts then the Board must determine which witness's testimony to give the most credibility.

In reaching a credibility

determination the Board should bear in mind

the following principles of law. The law

presumes that all witnesses who are sworn to

the oath testify to the truth. It's the

obligation of the triers of fact to attempt

to reconcile discrepancies, but when that's

impossible the triers of fact must decide

which witness speaks the truth versus which

witness has stated a falsehood despite his or

her oath.

In determining which witness is believable the Board as fact finder has wide discretion. It should, however, consider in determining which witness speaks the truth the witness's interest, if any, in the outcome of the matter, their good intentions, their seeming honesty, their respective opportunities for personal knowledge of the facts by which they are testifying and their conduct and demeanor on the witness stand.

2.1

weigh the evidence minimally on the scales of justice. If the scales tip in favor of the State, the Board must find for the State. If the scales tip in favor of the Respondent, the Board must find for the Respondent. If the scales are evenly balanced, the Board should bear in mind the State has the burden to prove that the discipline sought, civil penalties, costs, what have you are warranted.

After full and impartial review of the evidence presented to you you may find perhaps that no violation has occurred. You may find a violation occurred, but that no penalty should be imposed. You may find that a violation occurred, but that the State's proposed civil penalty or set of civil penalties is too high or too low, that a violation occurred and that the penalty the State seeks is proper and that cost should be assessed of Respondent.

The appropriateness of a penalty may include consideration of any number of

factors including, but not limited to whether
the amount imposed will be a substantial
economic deterrent to the violator, the

circumstances leading to the violation, the severity of the violation or risk or harm to the public, the economic benefits gained by the violator as a result of noncompliance and the interest of the public.

2.4

In assessing violations or a single violation the Board may consider any evidence that the parties have introduced including, but not limited to whether the conduct was or is of a continuing nature or was a one-time occurrence. Additionally, the Board may also consider what it has done in previous similar matters for comparison purposes. The Board must also indicate any policy reason for its decision.

From time to time I may have been called upon to make rulings of law and procedure during this hearing. The Board alone must make the decision in this matter and must not draw inferences concerning any opinion that I may have from any statement or

ruling that I have made. It's improper for
the administrative judge to participate in
the Board's debate and deliberations because
it's the Board's sole responsibility and duty

conclusions of law, and policy reasons for its decision in this matter. I will, however, be available to answer any legal questions on the record if they arise. At this point, I turn this matter over to the board's chair to proceed	
I will, however, be available to answer any legal questions on the record if they arise. At this point, I turn this	
9 answer any legal questions on the record if 10 they arise. At this point, I turn this	
10 they arise. At this point, I turn this	
11 matter over to the board's chair to proceed	
12 with the deliberative process.	
MS. DeBUSK: Thank you, Your	
14 Honor.	
15 Findings of fact. We have to go	
through each of these findings of fact at the	
17 conclusion of all the policy statements.	
18 THE COURT: I can barely hear	
19 you.	
MS. DeBUSK: So the first thing	
we need to do is findings of fact?	
22 THE COURT: Findings of fact,	
23 yes.	
MS. DeBUSK: Okay.	
102	

1	THE COURT: You may use the
2	notice if you wish to help guide you in that
3	or you can start completely over. And the
4	State did not file a proposed order, right,
5	Dr. Driver, in this matter?
6	MR DRIVER. That's correct.

7 Your Honor. THE COURT: Okay. Some boards have a general deliberation at the beginning. 9 Other boards say look at the allegations of 10 11 fact and go one, two, three, four, five, yea, 12 nay, amend, alter. I do not know what is the 13 practice of this particular Board. But 14 certainly you will know that. 15 MS. DeBUSK: Sure. Thank you. We'll just take the allegations of fact and 16 17 just take them one by one and discuss each one individually. 18 So do we agree or not agree that the 19 Respondent does not hold or has ever held a 20 21 Tennessee contractor's license or a Tennessee home improvement license. 22 MR. BRODD: Agree. 23 24 MR. SMITH: Do we know that he's 103

never held one? I mean, I agree he does not hold one now.

MR. TICKLE: He doesn't hold one now, but we don't know if that he didn't never hold a contractor's license.

MR. SMITH: I mean, we could

find out, but it doesn't make a difference.

MR. TICKLE: It doesn't make a 8 9 difference. MR. SMITH: Okay. 10 MR. BRODD: Only if Telise 11 testified to that. 12 13 MS. DeBUSK: That's Telise's 14 testimony. 15 MR. SMITH: Oh, okay. That he 16 never has had one; never, ever. 17 MS. DeBUSK: So should we bring 18 this in the form of a motion? 19 THE COURT: Well, I've seen some boards take a motion on each allegation. 20 I've seen some boards that go through all of 21 the allegations of fact and then do one big 22 23 motion. I do not know what's the practice of 24 this particular Board. 104

- MS. DeBUSK: It varies based on 1 2 the case.
- THE COURT: It varies. Then I
- guess you would consult with the board 4
- members to see what they would like to do 5
- with this particular matter.
- MS. DeBUSK: Board members, what 7
- would you like to do?
- MR. SMITH: I think we can do 9

10 them all together in this case. MS. DeBUSK: Do it altogether. 11 No. 2, are we in agreement that 12 Mr. Norris contracted to do work with Mr. Lee 13 and his wife for 13,600? Are we in 14 15 agreement? 16 THE BOARD: Yes. 17 MS. DeBUSK: Okay. Then No. 3, 18 Respondent continued to operate as an 19 unlicensed home improvement contractor for a 20 period of at least 37 days under the Lee 21 contract until December 28, 2004, when 22 Respondent provided a guarantee of the work performed under that contract and 23 24 acknowledging his receipt for final payment.

1	THE BOARD: Yes.
2	MS. DeBUSK: Based on the
3	evidence are we in agreement that Mr. Norris
4	entered into a contract with Mr. Lawson on or
5	about November 18, 2005, for an amount of
6	15,100 to do driveway work, concrete work for
7	Mr. Lawson?
8	THE BOARD: Yes.
9	MS. DeBUSK: Number 5,
1 0	Respondent worked on the Lawson project until

11	at least November 23rd, 2005, a period of at
12	least six days?
13	THE BOARD: Yes.
14	MS. DeBUSK: Then No. 6, at
15	times relevant hereto, a Tennessee home
16	improvement license was required to perform
17	home improvement work with a contract value
18	of more than 3000 in Shelby County?
19	THE BOARD: Agree.
20	MS. DeBUSK: So do we make that
21	in the form of a motion up to six before we
22	go in the conclusions of law?
23	THE COURT: Most boards do, but
24	certainly that's up to the Board.
	106
1	MS. DeBUSK: Does anyone want to
2	make a motion?

3 MR. SMITH: I would like a motion that we accept the alleged allegations as presented. 5 MR. BRODD: Second. MS. DeBUSK: Do we have 7 8 discussion. All in favor, I? 9 THE BOARD: I. MS. DeBUSK: Opposition? 10 THE BOARD: (Nonresponsive.) 11 12 MS. DeBUSK: The motion carries.

13	Your Honor, was it okay that we
14	collectively said I? Sometimes they ask us
15	to individually state for the record.
16	THE COURT: I guess my
17	experience is that each board differs, but
18	the majority of the boards do a collective on
19	the findings of fact, a collective on the
20	conclusions of law, a collective on the
21	policy reasons, and do a roll call vote on
22	the entirety. But certainly each board can
23	differ in that regard.
24	MS. DeBUSK: Now, we're on the
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1	second topic, alleged conclusions of the law.
2	Does everyone have that in front of them?
3	Do I need to read this or can
4	everyone just read it? Do I need to read it
5	out loud?
6	MR. SMITH: No.
7	MS. DeBUSK: So are we in
8	agreement to Code 62-37-1036(a), what you're

9 reading there? Is everyone in agreement.

10 THE BOARD: Yes.

11 MS. DeBUSK: Number 2, are we in

12 agreement for the Code 62-37-114(a)?

13 THE BOARD: Yes.

14	MR. SMITH: Which one was that?
15	MS. DeBUSK: Number 2.
16	MR. SMITH: I'm not sure we ever
17	looked at it. One job was a continuing
18	37-day violation. I mean, we usually looked
19	at it one job was one violation.
20	MR. TICKLE: I believe that has
21	to do with the dates in our contracting book
22	it says continuing.
23	MR. SMITH: Yeah.
24	MR. TICKLE: But you're right.
	100
	108
1	MR. SMITH: We've had
2	contractors who took a year to do a job.
3	MR. TICKLE: Right. You're
4	exactly right.
5	MS. DeBUSK: Number three, are
6	we in agreement to the six-day continuing
7	violation of 62-37-114(a)?
8	MR. TICKLE: I think the problem
9	that I have with that right there is it's
10	evident that he was in violation, however, I
11	blame the city of Germantown in a way for
12	this one right here because he pulled a
13	permit. Germantown didn't tell him he wasn't
14	licensed. I think that's a bad deal on his

part not knowing that he wasn't licensed. I

- think his license goes back to the '70s and 16 17 not knowing that he wasn't licensed. And if you're able to pull a permit, you would think 18 that you're licensed and somebody should have 19 20 said well, no, you're not licensed. But it's 21 clear that he wasn't licensed. I think this 22 is kind of a bad deal to a degree on the fact 23 that Germantown allowed him to pull a permit. 24 MR. SMITH: We can site the 109 1 city. MR. TICKLE: I think that would 3 be a good idea. MR. BRODD: This permit is a 4 street permit. It's not really a permit to 5 perform the work. 6 MR. TICKLE: But to do this you're supposed to be licensed. 8 9 MR. BRODD: There's no place on his street cut permit that lists his license 10
- MR. TICKLE: They know. Let me

 put it like this. They know.

numbers.

- MS. DeBUSK: I'm not sure we can bring charges against the city.
- 16 MR. TICKLE: I don't know. I'm

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just saying that's -- I think that's --
17
18
                        MR. SMITH: Yeah, that's tough.
                        MS. DeBUSK: It is tough.
19
20
                        MR. TICKLE: That's a tough deal
           right there when you think you're doing
21
22
           something and nobody is saying no, you're
23
           wrong. Again, on Mr. Lee's case, when he
24
           went and did his he didn't pull a permit.
                                                       110
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1 Mr. Lee pulled the permit for him supposedly is what he was saying. In this here he 2 pulled his own permit, but wasn't cited for 3 it. So I think that's kind of a gray area. I'm just throwing that out there. MS. DeBUSK: Sure. Number four, 6 are we in agreement with number four about 7 the civil penalty? 8 MR. SMITH: What did the State 9 request the penalty to be? 10 MR. DRIVER: May I, Your Honor? 11 THE COURT: Sure. 12 13 MR. DRIVER: And I'm just going to repeat what I said there, which is I 14 15 pointed out that it was in excess of \$28,000 worth of or contracts and simply requested 16 17 that the penalty, if any, that's imposed be commensurate with that amount. 18

19	MR. SMITH: It's a total of 28,
20	but on any one job it's not 28. Am I not
21	adding right?
22	MR. TICKLE: You're correct.
23	What you're saying Reese, yeah, correct.
24	MR. SMITH: They are combined.
	111
1	MS. DeBUSK: Both jobs total 28.
2	MR. SMITH: But they're 28. But
3	we don't look at it that way.
4	MS. DeBUSK: Well, we can.
5	MR. TICKLE: You can if you
6	wanted to.
7	MS. DeBUSK: When we want to
8	assess a civil penalty we can add it together
9	if we want. You can say or you can break it
10	out and say 15 and 13 if you want to
11	technically break it out.
12	MR. SMITH: In some cases though
13	it wouldn't be a violation. If you're under
14	25,000, 25,000 was over. You can't combine
15	them and put him in violation of the \$25,000
16	rule.
17	MR. TICKLE: Because it wasn't
18	\$25,000 to start off with.
19	MR. SMITH: Correct.

20	MR. BRODD: The home improvement
21	loan was 3000.
22	MS. DeBUSK: Right. For the
23	civil penalty total.
24	MR. TICKLE: Let me ask you
	112
1	this. Your Honor, may I ask the State a
2	question?
3	THE COURT: Well, let's see what
4	the question is.
5	MR. TICKLE: The question is, we
6	asked the State concerning what penalty the
7	State thought and they indicated \$28,000 is
8	what I heard.
9	THE COURT: That's what the
10	State said and that's what they were
11	suggesting, but it's up to the Board.
12	MR. TICKLE: Yes, ma'am. Yes,
13	ma'am. But that's what the State has
14	suggested. I just want to be sure I'm
15	hearing that right.
16	THE COURT: I believe so.
17	MR. DRIVER: I was simply
18	suggesting that the Board take that amount

into account in determining the amount of the

civil penalty. The State was not necessarily

requesting strictly \$28,000.

19

20

23	MR. TICKLE: Understood.
24	MS. DeBUSK: Does someone want
	113
	113
1	to make a motion for the conclusion of law
2	based on what you've just read in 1 through
3	4?
4	I'm asking the Board if someone wants
5	to make a motion for a conclusion of law
6	based on what we've just read, the
7	conclusions or law number one through four.
8	MR. BRODD: I make a motion that
9	the alleged conclusions of law items one
10	through four that we find them to be
11	accurate; the conclusions of law.
12	MS. DeBUSK: Do we have a
13	second?
14	MR. TICKLE: Second.
15	MS. DeBUSK: Discussion? All in
16	favor say, I?
17	THE BOARD: I.
18	MS. DeBUSK: Opposition?
19	THE BOARD: (Nonresponsive.)
20	MS. DeBUSK: Motion carries for
21	conclusions of law.
22	Now, policy statement.

MS. DeBUSK: Understood.

23 THE COURT: Well, you also need
24 to describe the penalty, if any.

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1 MR. TICKLE: I think that's what
2 we're fixing to try to do.
3 MS. DeBUSK: That our policy
4 statement is our penalty?
5 THE COURT: Okay. I can hardly

hear you, but I think you just moved to adopt

proposed conclusion of law one through four.

believe you either said, and based on the

8 MS. DeBUSK: Yes.

7

11

9 MR. TICKLE: Yes, ma'am.

10 THE COURT: But then I don't

12 facts of this case we impose a civil penalty

of 0, of 1000, 2000, 28,000 or whatever.

MS. DeBUSK: Got it.

MR. TICKLE: That's correct.

16 THE COURT: I don't think you've

gotten to that point. That would be the next

18 point you would want to consider and then

19 after that we need to consider policy reason

20 for your action overall.

MR. TICKLE: Yes, ma'am.

MS. DeBUSK: So what's the

Board's pleasure on a penalty, if any, to

24 Mr. Norris for working as an unlicensed

1	contractor?
2	MR. SMITH: Can we enforce a
3	penalty on an unlicensed contractor?
4	THE COURT: You certainly have
5	the opportunity to. I don't know what this
6	Board is going to
7	MR. SMITH: The district
8	attorney has to collect it.
9	THE COURT: The district
10	attorney, no.
11	MR. SMITH: How do we collect
12	our money on an unlicensed contractor?
13	THE COURT: Basically, you issue
14	a final order that says and the penalty for
15	this conduct is, just write a number of
16	\$5000. That becomes a final order, which is
17	then served on the respondent and it directs
18	him to pay that amount into, I believe, it's
19	the state treasury in so many days by
20	certified check or something of that kind.
21	MR. SMITH: Even though he's
22	unlicensed?
23	THE COURT: I'm aware that many
24	boards have sanctioned unlicensed individuals

- 1 in other arenas over the years. I do not
- 2 know what's the practice of this Board and
- 3 that point was not argued.
- 4 MR. SMITH: Right.
- 5 THE COURT: Therefore, I would
- 6 assume they felt that as Board members you
- 7 had sufficient history to make that
- 8 determination.
- 9 MR. SMITH: I don't ever
- 10 remember doing that. If he's not going to
- pay the 4000, I don't know why we think he's
- going to pay this here.
- MS. DeBUSK: Well, both
- 14 contracts together total 28,700. So we can
- assess a penalty for -- throwing out a
- 16 suggestion -- of 28,700 plus the court cost
- for proceedings, I think.
- 18 THE COURT: And the
- investigation is a possibility.
- MS. DeBUSK: And the
- 21 investigation.
- 22 THE COURT: But you will need to
- look at each of those things to see what's
- 24 warranted.

1	MS. DeBUSK: Well, the 28,700
2	both contracts total together, we can assess
3	that penalty because our law states that we
4	can assess the penalty. Law 22-37-111(6)(c).
5	I'm asking my board what they want to do?
6	MR. SMITH: The way I read that,
7	Cindi, is that we can assess a civil penalty
8	of a thousand dollars for each violation.
9	MS. DeBUSK: It's a minimum of a
10	thousand dollars.
11	THE COURT: No, up to \$1000 per
12	violation.
13	MR. TICKLE: And then you can go
14	each day after that for several violations.
15	You can assess a penalty basically \$2000 to
16	start off with and then you can assess on a
17	daily basis from that point forward.
18	MS. DeBUSK: Okay. 37 days and
19	6 days if you want to look at it that way.
20	MR. SMITH: That's 43 days.
21	MS. DeBUSK: I'm throwing out a
22	suggestion. I'm trying to break it out.
23	MR. TICKLE: That's 43,000 right
24	there and plus 2 is 45,000.

2 pay that. 3 MS. DeBUSK: It says penalty not to exceed. Does someone have other 4 suggestions? 5 MR. TICKLE: I would like to 6 7 make a suggestion that we flag him. Flag 8 Virgil Norris and flag any company that he's 9 associated with as well as Southern Concrete 10 Company, which is the alias that he's using 11 now, and then assess a penalty of \$10,000 12 payable to the State. 13 MS. DeBUSK: Well, 43 days at \$667.44 per day gets you your 28,700 for the 14 15 two contracts. MR. TICKLE: Okay. I was just 16 17 making a suggestion. 18 MS. DeBUSK: Oh, no. Mine is a 19 suggestion as well. MR. TICKLE: \$10,000 and flag 20 21 the file, yeah. 22 MR. SMITH: What about the court 23 costs? 24 MR. TICKLE: The court costs and

119

1 expenses, whatever that might be.

MS. DeBUSK: Where is the 10,000

3 coming from?

4	MR. TICKLE: \$5000 for each
5	violation. The jobs weren't that much. I
6	mean, that's a third of the job. And kind of
7	like Reese said, it's going to be tough to
8	get anything.
9	MS. DeBUSK: But he's unlicensed
10	activity. Why aren't we just doing the
11	dollar figure of the contracts. I mean he
12	was paid for shotty work that he wasn't
13	licensed to perform to begin with.
14	MR. TICKLE: Well, I'm going to
15	agree with the shotty work. But on the same
16	token, I still have a problem with Germantown
17	on the \$13,000. I mean, that's the biggest
18	one. That was \$16,000, I believe for that
19	job right there. So if you took 16 from it
20	and you're back to \$13,000, which is going
21	back to material stuff. Mr. Lee's job, most
22	of his job was done with the exception of
23	\$4000 hypothetically.
24	MS. DeBUSK: Right. But I'm not

so sure Germantown, we should even bring that in.

MR. TICKLE: Well, that's one of the things we were saying that he didn't get

5	a permit. We asked if he got a permit and he
6	said no. And then we found out that he got a
7	permit and Mr. Lee got a permit. See what
8	I'm saying?
9	MS. DeBUSK: I understand that.
10	MR. TICKLE: And I would think
11	if you got a permit whoever gave the permit
12	should know if a man is licensed or not.
13	That's just my feeling. Everybody is
14	different. That's just like if you were to
15	go for an electrical permit. If you were to
16	go they would look and see if you were
17	licensed, I would think rather than just to
18	say I'm Cindi and I'm going up to get it, a
19	permit.
20	MS. DeBUSK: I'm not so sure we
21	need to put the responsibility completely on
22	Germantown.
23	MR. TICKLE: I'm not putting it
24	on them. I'm just saying

MR. SMITH: He's just saying if
someone had brought it to his attention he
might not have done the other job.

MS. DeBUSK: Got it.

MR. TICKLE: He might have
backed off.

7 MR. SMITH: I mean, 10,000 is a 8 pretty strong fine for a \$28,000 job that he 9 probably made \$800 on. MR. TICKLE: I was just looking 10 11 at what he charged for the concrete, \$3.36. 12 I don't even know how he was able to buy the 13 concrete for that. MR. SMITH: It was '04. 14 15 MR. TICKLE: But still --MS. DeBUSK: So if you break the 16 17 law, you go in and rob a bank and you only get \$800 out of the till, you still broke the 18 law. It doesn't matter if you didn't make 19 20 money off of it. You still broke the law. 21 I'm not sure where that comes into play, the dollar figure. If he made \$800 or whatever, 22 he made a profit. What does it matter. He 23 broke to law. He collected that money. 24

122

MR. SMITH: Yes, he did. Some

of them bid without a license, we held their

license for six months, fined them a few

bucks, and told them to keep going.

MS. DeBUSK: We can't go with

that information. We have to go with what's

in front of us.

MR. SMITH: We can't do that. 8 9 But, I mean, on other cases we would go with whatever bidden or maybe complete without a 10 license. We held it six months and fined 11 them a little bit. 12 13 MS. DeBUSK: Well, it's a new 14 day. It's a new day. Unlicensed contractors out there 15 16 that's giving the licensed contractors a bad 17 name and taking up the time of the owners, 18 the State's money and time out there to do 19 work they're not licensed the do. 2.0 MR. TICKLE: You are exactly right. We hear exactly what you're saying. 21 MR. SMITH: It would be okay to 2.2 23 do it if he was in Williamson County or if it was in 90 other counties and if he was in 24 123

- Tipton County. 1
- 2 MR. TICKLE: If he was in Tipton
- 3 County he would have been fined, but he's in
- 4 Shelby.
- MR. SMITH: But that's not the 5
- point.
- MR. TICKLE: That's not the
- point, exactly.
- MR. SMITH: He's guilty of 9

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10
          operating without a license.
                    I'll second his motion.
11
                        MS. DeBUSK: What's the motion?
12
                        MR. TICKLE: The motion is flag
13
14
           the file, flag Virgil Norris, and flag
15
           Southern Concrete Company and any other
           company that Virgil Norris is involved in and
16
           fine him $10,000, plus the court cost.
17
18
                        MS. DeBUSK: And investigation
19
           fees.
20
                        MR. TICKLE: And investigation
21
           fees. Any fees associated with Mr. Virgil
          Norris.
22
                        MS. DeBUSK: Okay. We have a
23
24
           motion.
                                                      124
                        MR. OWENS: I second it.
 1
                        MS. DeBUSK: Discussion? All in
 2
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MS. DeBUSK: Discussion? All i

favor, I?

THE BOARD: I.

MS. DeBUSK: Oppose? I.

Motion carries.

Now, policy statements. You will

Now, policy statements. You will

MR. TICKLE: We need some help.

MS. DeBUSK: We need help on

11	policy statement.
12	THE COURT: Many boards use the
13	same policy reason on almost all of their
14	orders. Do you have a standard that you use?
15	MS. DeBUSK: We kind of do.
16	THE COURT: Just to get the
17	discussion started you may throw that one out
18	and see if your board members agree that was
19	appropriate here, to get the discussion
20	started. But you're not limited in any way.
21	MS. DeBUSK: Usually, Mr. Driver
22	helps us with our policy statement. Okay
23	Board, the policy statement.
24	MR. BRODD: It's our policy that
	125

1	we don't allow unlicensed contractors.
2	MR. TICKLE: If we're against
3	unlicensed contractors. And if they do
4	violate it, they will be fined and flagged.
5	Madam Chairman, you might mention what flag
6	means so everybody will understand what a
7	flag is.
8	MS. DeBUSK: Your Honor, can
9	Telise Roberts explain since that's what she
10	does, what flag a file means so our home
11	owners will understand what we're speaking

about?

13	MS. GRAY: Or I can as the Board
14	attorney.
15	MS. DeBUSK: Or can our Board
16	attorney explain what flag a file means?
17	MR. TICKLE: I would just like
18	for the record to know what really happened.
19	We know, but the individual layman doesn't
20	know what flag means if that would be okay.
21	THE COURT: Perhaps the board
22	member who proposed flagging the file might
23	provide an explanation.
24	MR. TICKLE: Flagging a file

1	means he's not going to be able to get a
2	contractor's license here in the state of
3	Tennessee or if he teams up with Earnest or
4	myself, something like that and his name
5	appears, he's not going to be licensed. So
6	we won't have a problem here in the state, so
7	to speak, with him coming in and saying I'm
8	sorry, I did wrong. Now, I want to get a
9	license. That's not going to happen at all.
10	It can't happen. It won't happen at all.
11	This is forever. So that's what's happened
12	to him.
13	MS. DeBUSK: Are you putting our

14	policy statement in the form of a motion?
15	That's the Board's policy statement for this
16	case.
17	THE COURT: Right.
18	MR. BRODD: I'll make that a
19	motion.
20	MS. DeBUSK: Do we have a
21	second?
22	MR. TICKLE: Second.
23	MS. DeBUSK: Discussion?
24	All in favor?
	127
1	THE BOARD: I.
2	MS. DeBUSK: Opposition?
3	THE BOARD: (Nonresponsive.)
4	MS. DeBUSK: Motion carries.
5	THE COURT: You may wish to have
6	a roll call for the matter in its entirety:
7	Findings of fact, conclusions of law, penalty
8	and policy reason.
9	MS. DeBUSK: So we have voted
10	individually on the findings of fact, the
11	conclusions of law, the penalty, and the
12	policy of statement. And now we're going to

15 THE COURT: Sure, to take the

approve it?

13

14

individually -- do we need a motion first to

16	roll call.
17	MS. DeBUSK: To take the roll
18	call. Do we have a motion for roll call
19	based on how we voted for findings of fact,
20	conclusion of law, penalty and policy of the
21	statement.
22	MR. SMITH: I move for a roll
23	call vote.
24	MR. TICKLE: Second.
	128
	120
1	MS. DeBUSK: All in favor?
2	THE BOARD: I.
3	MS. DeBUSK: Opposed?
4	THE COURT: And a roll call
5	means the individual Board members names are
6	called and then they say yes or no.
7	MS. DeBUSK: Okay. Mark Brodd.
8	MR. BRODD: I agree with all
9	four motions that were passed.
10	MS. DeBUSK: Reese.
11	MR. SMITH: Reese Smith. I

MS. DeBUSK: Ronnie Tickle.

and agree with all motions that were passed.

MR. TICKLE: I'm Ronnie Tickle

MR. OWENS: Earnest Owens, and I

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15

17	agree with all motions that were passed.
18	MS. DeBUSK: And Cindi DeBusk.
19	I agree with all motions that have passed,
20	except for the one that I voted against.
21	THE COURT: So then that would
22	complete the hearing and the State's attorney
23	will draw the written order for your
24	signature. That concludes this hearing.
	129
1	MS. DeBUSK: Thank you, Your
2	Honor.
3	(PROCEEDINGS ENDED.)
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1	COURT REPORTER'S CERTIFICATE
2	STATE OF TENNESSEE:
3	COUNTY OF SHELBY:
4	
5	I, CORA JEAN LEWIS, Reporter and
6	Notary Public, Shelby County, Tennessee, CERTIFY:
7	1. The foregoing deposition was
8	taken before me at the time and place stated in the foregoing styled cause with the
9	appearances as noted;
10	2. Being a Court Reporter, I then reported the deposition in Stenotype to the
11	best of my skill and ability, and the foregoing pages contain a full, true and
12	correct transcript of my said Stenotype notes then and there taken;
13	3. I am not in the employ of and
14	am not related to any of the parties or their counsel, and I have no interest in the matter
15	involved.
16	WITNESS MY SIGNATURE, this, the 1st day of June, 2010.
17	
18	
1 9	

20	CORA JEAN LEWIS
21	Court Reporter Notary Public
2.2	for the State of
22	Tennessee at Large
23	
	My commission expires:
24	June 11, 2011